

Supreme Court of the United States

OCTOBER TERM, 1969

No. 927

JOHNNY WILLIAMS,

Petitioner,

vs.

FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF
APPEAL OF FLORIDA, THIRD DISTRICT

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County, Florida, Division "D", No. 68-1466

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IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY,
STATE OF FLORIDA

FEBRUARY TERM, 1968

No. 68-1466

THE STATE OF FLORIDA

vs.

JOHNNY WILLIAMS

INFORMATION FOR ROBBERY—Filed March 20, 1968

IN THE NAME AND BY AUTHORITY OF THE
STATE OF FLORIDA:

ALFONSO C. SEPE, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that JOHNNY WILLIAMS on the 6th day of March, 1968 in the County and State aforesaid, did unlawfully and feloniously make an assault upon MARIA SALAS and did by force, violence or putting in fear, rob, steal, take and carry away from the person or custody of the said MARIA SALAS, and against her will certain monies, goods or other property, to-wit:

Two (2) Rings,

said property being the subject of larceny and the property of MARIA SALAS, in violation of 813.011 Florida Statutes, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

/s/ Alfonso C. Sepe
Assistant State Attorney
Eleventh Judicial Circuit of Florida

REM/hht

3/15/68

Jail # 7137-68; Bkd: 3/11/68

STATE OF FLORIDA:
COUNTY OF DADE:

Personally appeared before me, ALFONSO C. SEPE, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense therein charged.

Subscribed in Good Faith

/s/ Alfonso C. Sepe
Assistant State Attorney
Eleventh Judicial Circuit of Florida

Sworn to and subscribed before me this 15th day of March, 1968.

/s/ J. F. McCACKEN
Clerk
Criminal Court of Record,
Dade County, Florida

By /s/ [Illegible], D.C.

[SEAL: Criminal Court of Record]

WITNESSES FOR THE STATE

1. A. W. Mitchell, MPD

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA

—vs—

JOHNNY WILLIAMS

MISCELLANEOUS DEFENSE MOTIONS—Filed July 3, 1968

MOTION TO IMPANEL TWELVE MAN JURY

The Defendant moves the court to impanel a twelve man jury in this cause.

MOTION FOR DISCOVERY

The Defendant moves that the State furnish him with the names and addresses of the witnesses on whose evidence the Information is based.

The Defendant further moves for an order requiring the State to produce and permit the Defendant to inspect, copy or photograph any tangible evidence to be introduced, or otherwise material to the trial in this cause.

The Defendant further moves for an order requiring the State to allow the Defendant to inspect and copy any written or recorded statements or confessions of the Defendant, or of any witnesses who may testify in this cause.

MOTION FOR BILL OF PARTICULARS

The Defendant moves that the State furnish him with the exact location and the exact or approximate time that the crime for which he is being charged was committed.

A copy of this pleading was mailed to the State Attorney this 1 day of July, 1968.

/s/ Richard Kanner
Attorney for Defendant
1150 N. W. 14th Street
Miami, Florida 377-9711

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

DIVISION "D"

68-1466

ROBBERY

STATE OF FLORIDA

vs.

JOHNNY WILLIAMS

MINUTE BOOK ENTRIES—August 1, 1968

Denis A. Dean, Assistant State Attorney.

Richard Kanner, Counsel for the Defendant.

Reported by: Sylvia Burrow.

Richard Kanner, Counsel for the Defendant, Johnny Williams, presented a Motion to Impanel Twelve Man Jury, which motion the Court denied.

Counsel for the Defendant presented a Motion for Discovery, which motion the Court granted in part and denied in part.

Counsel for the Defendant presented a Motion for Bill of Particulars, which motion the Court granted.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA

—v8—

JOHNNY WILLIAMS

MOTION FOR A PROTECTIVE ORDER—Filed August 12, 1968

The Defendant would show unto this court that the State has demanded, pursuant to Rule 1.200 of the Florida Rules of Criminal Procedure, that the Defendant serve upon the prosecuting attorney a notice in writing of the Defendant's intention to claim an alibi; that the Defendant does in fact intend to produce an alibi witness or witnesses, and that the disclosure sought by the State Attorney at this time is in violation of the rights guaranteed to the Defendant under the Constitution of the State of Florida and the United States of America, in that

1. The notice of alibi rule is a rule of substantive law, and accordingly is not authorized by Article 5, Section 3 of the Florida Constitution, which limits the rule making power of the Florida Supreme Court to adopt rules of practice and procedure only, or elsewhere in the Florida Constitution or Florida Statutes.

2. The notice of alibi rule compels the Defendant in a criminal case to be a witness against himself in violation of the Florida Declaration of Rights, Section 12, and the 5th and 14th Amendment of the United States Constitution.

A copy of the above pleading was served on the State Attorney this 12 day of August, 1968.

/s/ Richard Kanner
Attorney for Defendant
609 Professional Arts Center
1150 N. W. 14th Street
Miami, Florida 377-9711

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

DIVISION "D"

68-1466

ROBBERY

STATE OF FLORIDA

vs.

JOHNNY WILLIAMS

MINUTE BOOK ENTRY—August 13, 1968

Denis A. Dean, Assistant State Attorney.

Richard Kanner, Special Public Defender, Counsel for
the Defendant.

Reported by: Sylvia Burrow.

Richard Kanner, Special Public Defender, Counsel for
the Defendant, Johnny Williams, presented a Motion for
a Protective Order, which Motion the Court denied.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Cause Numbered 68-1466

STATE OF FLORIDA

v/s

JOHNNY WILLIAMS, DEFENDANT

DEMAND FOR NOTICE OF INTENTION TO RELY
UPON ALIBI—Filed August 13, 1968

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, herewith files its written demand for Notice Of Intention To Rely Upon Alibi by the defendant—in this cause; and, pursuant to Rule 1.200 of the Florida Rules of Criminal Procedure, the State alleges as specifically and particularly as is known to the prosecutor herein the place, date and time of the commission of the crime as follows: to-wit:

The alleged crime was committed at: 2841 Northwest 21st Avenue, Dade County, Florida, on or about 2:30 P.M. on the 6th day of March, 1968.

WHEREFORE, the State, having fully complied with the provisions of Rule 1.200, demands complete and continuing disclosure relating to this defense as by the said rule is prescribed and respectfully moves that the Court direct the defense to furnish said information not less than 30 days prior to date of trial.

RICHARD E. GERSTEIN
State Attorney
Eleventh Judicial Circuit of Florida

By /s/ Denis Dean
DENIS A. DEAN
Assistant State Attorney

[Certificate of Service (Omitted in Printing)]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case Number 68-1466

STATE OF FLORIDA

—vs—

JOHNNY WILLIAMS, DEFENDANT

ANSWER TO DEFENSE MOTIONS—Filed August 13, 1968

COMES NOW RICHARD E. GERSTEIN, State Attorney, for the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney and files this the State's Answer to Defense Motions, as follows:

MOTION TO IMPANEL TWELVE MAN JURY

Denied.

MOTION FOR DISCOVERY

Tangible evidence may be viewed by contacting the State Attorney's Office.

There are no statements made by the defendant which have been reduced to writing.

MOTION FOR BILL OF PARTICULARS

The offense took place on March 6, 1968, at approximately 2:30 p.m., at 2841 Northwest 21st Avenue, Dade County, Florida.

RICHARD E. GERSTEIN
State Attorney

By: /s/ Denis A. Dean
Assistant State Attorney

[Certificate of Service (Omitted in Printing)]

[fol. 1]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA, PLAINTIFF

vs.

JOHNNY WILLIAMS, DEFENDANT

TRANSCRIPT OF TESTIMONY—August 15, 1968

The above-entitled case came on for trial before the Honorable Paul Baker, Judge of the above-styled court, and a jury, at the Metropolitan Dade County Justice Building, Miami, Florida, on the 15th day of August, 1968, commencing at 10:21 a.m.

APPEARANCES:

DENIS DEAN, Assistant State Attorney, Miami, Florida, on behalf of the State of Florida.

RICHARD KANNER, Esq., Specially Appointed Public Defender, Miami, Florida, on behalf of the Defendant.

[fol. 3] THE COURT: Bring Johnny Williams out, please.

Mr. Kanner, you do not have any motions or anything pending; do you?

MR. KANNER: For the record, I would just like to renew my motion to impanel a 12-man jury.

THE COURT: Denied. Have you given Mr. Kanner a copy of the venire?

MR. KANNER: Yes, Your Honor.

THE COURT: You may put the first six jurors in the box.

(Thereupon the prospective jurors were called, examined on their voir dire, and sworn to try the case.)

THE COURT: While the courtroom clears, court will be in recess for five minutes.

(Thereupon a short recess was taken, after which the following proceedings were had out of the hearing of the jury:)

MR. KANNER: Your Honor, if the Court please, I have had helping me on this case a recent graduate of the University of Florida who has not yet passed his [fol. 4] Bar, George Cardet, who is fluent in Spanish, and if the Court would have no objection, I would like for him to sit at counsel table with me.

THE COURT: I have no objection.

Before opening statement, would either side like the witnesses sworn?

MR. KANNER: Your Honor, I have no preference.

MR. DEAN: My witnesses were outside. Evidently, they have gone down for coffee.

THE COURT: If it is all right, I intend to have opening statements and break for an hour for lunch, and then come back and start the testimony. I would like to finish this today, if that is all right with you.

(Defendant enters courtroom.)

THE COURT: Are both sides ready?

MR. DEAN: Yes, Your Honor.

MR. KANNER: Yes, Your Honor.

THE COURT: Bring in the panel, please.

(Thereupon the jury returned to the courtroom.)

MR. DEAN: State concedes the presence of the jury, Your Honor, and waives polling.

MR. KANNER: Your Honor, I know of nothing in [fol. 5] the law or a custom that we have to do this every time. I would like to stipulate with Mr. Dean that we can forego this formality.

THE COURT: Is that all right with you?

MR. DEAN: Yes, Your Honor.

MR. KANNER: Thank you, Your Honor.

THE COURT: You may proceed.

MR. DEAN: Thank you, Your Honor.

May it please the Court, Mr. Kanner, gentlemen of the jury, this stage of the trial that we are beginning is referred to or commonly called the opening statement of counsel. I point out to you that nothing that I say to you now nor nothing that I say to you in this opening statement is to be considered by you as evidence.

As we have said previously, the evidence will be presented to you by the witnesses from the witness stand. But the opening statement is intended as sort of a capsule summary or an outline of the evidence, first from the State's side, as I feel it will be presented to you.

This document I hold in my hand is called the Information or is the charge that is pending against this [fol. 6] defendant, and I would like to just take a moment and read it to you:

"In the Criminal Court of Record, in and for Dade County, State of Florida, February Term, 1968, The State of Florida vs. Johnny Williams, Information for Robbery.

"In the name and by authority of the State of Florida:

"Alfonso C. Sepe, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, Information makes that Johnny Williams on the 6th day of March, 1968, in the County and State aforesaid, did unlawfully and feloniously make an assault upon Maria Salas, and did by force, violence or putting in fear, rob, steal, take and carry away from the person or custody of said Maria Salas, and against her will, certain monies, goods or other property, to-wit: two rings, said property being the subject of larceny and the property of Maria Salas, in [fol. 7] violation of 813.011 of the Florida Statutes, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida."

Signed: "Alfonso C. Sepe, Assistant State Attorney."

This Information is the vehicle by which the defendant is brought into court, and this is the reason we are here today.

In support of the allegations in the Information, I believe that the evidence will show that on March 6, 1968, which was a Wednesday, at approximately 2:30 in the afternoon, Mrs. Maria Salas was returning home from doing some shopping.

She lived at 29th Street and Northwest 21st Avenue here in Dade County, City of Miami.

She parked her car and she was unloading groceries, taking her parcels into the house. She was surprised by the defendant, Johnny Williams, who jumped out and pointed a gun at her. There were certain statements made by the defendant, Johnny Williams, and, as a result, the Defendant Williams took two rings: One was a [fol. 8] wedding band and the other ring will be described to you by Mrs. Salas.

The defendant took these rings and ran out of Mrs. Salas' house.

I believe the evidence will show that there was no one else there. At the time, her husband was working and her children were away.

Mrs. Salas then chased or followed the defendant out of the house for some distance, saw him running, went back and got into a car and followed him to his car, which was parked approximately one and a half to two blocks away. She saw him get into the car and drive off.

I believe the evidence will further show that a man was coming down the street at approximately this time, by the name of Mr. Fay (phonetic) F-a-y; that Mr. Fay saw Mrs. Salas, heard her screaming and yelling, pointing at the defendant, Johnny Williams, and Mr. Fay stopped his car, saw the defendant get into his car, which was a white Thunderbird, and that Mr. Fay took down the license number of that car and gave the license number to the City of Miami Police Officer when he arrived at the scene.

Shortly after that, Mr. Williams was arrested and charged with the robbery of Mrs. Salas.

[fol. 9] Briefly, that is what the evidence will show. The defendant is charged with robbery. Witnesses will testify, and at the end of all the evidence, I believe you will find that the State has met its burden and the defendant is guilty. Thank you.

THE COURT: Mr. Kanner.

MR. KANNER: May it please the Court, gentlemen of the jury, many times, defense counsel will waive opening argument with fear. I have got no such problems here.

One of the problems that Mr. Dean has got—and I would like to say something parenthetically—there is nothing that I'm going to say in this trial that I want this jury to think that I am trying to reflect on Mr. Dean, because nothing could be further from the truth. Mr. Dean does not investigate these cases. He has no interest in these cases other than as a prosecutor. He presents the best evidence that he has. Nothing that I ever say should be interpreted by this jury as reflecting on Mr. Dean.

One of the things that Mrs. Salas is going to testify to is that the defendant was. And this woman is going to positively identify Johnny Williams as the person that [fol. 10] was in her house. The reason I know this is she identified him at another trial, but she is also going to say that he was in her house for some seven to ten minutes; that he had no mask on, that he had no gloves on.

One of the things that I am interested in knowing from the State is where the fingerprints are, because there is not one single iota of fingerprints or other physical evidence that, I believe, is going to be introduced today that is going to be connected to Johnny Williams to connect him up with this crime, other than this eye-witness testimony.

Now, there is Mr. Pay—it is either Pay or Fay. I thought it was Pay—who got the license number of the car. I do not think there is any doubt but what this automobile was used in the perpetration of a robbery. Mr. Fay—or Pay, I believe, it is—is going to testify that he came upon Mrs. Salas chasing in her automobile a person on the corner of 27th Street and 20th Avenue. That

he first noticed Mrs. Salas turn right from 19th Avenue down 27th Street, and she stopped and she spoke with three or four people in Spanish, apparently saying that this person, colored person, was the one who had robbed her. These people are not going to be here to testify, to [fol. 11] my knowledge.

Mr. Fay is not going to be able to identify this defendant. He is going to be able to say that this was a '60 white Ford Thunderbird, which was subsequently found, four or five days later, in Johnny Williams' house.

As I say, I do not think there is a great deal of question but what this Ford Thunderbird was used by whoever committed this crime, but when it comes down to the facts of the case as distinguished from the words, there is nothing, factually, there is no tangible, physical evidence to factually link Johnny Williams up at this time to the crime.

Now, it just so happened that Johnny Williams and his wife, during the time in question, were visiting a person who is going to be here to testify. It is during the time in question, and we have given this person's name to Mr. Dean and Mr. Dear has taken her deposition.

During the time in question, Johnny Williams and Johnny's wife and Mary Scotty—that is her name—were in Mary Scotty's apartment.

Now, it is unfortunate that he was not with a Priest or Rabbi, or probably unfortunate that he was not in [fol. 12] jail, but at the time of the robbery, he happened to be with Mary Scotty, and as a lawyer, I take my defense witnesses where I find them.

So, I would like to ask the jury to keep an open mind as the State presents its case. Judge Baker will probably instruct you later that you should not make any determination, Mr. Palmquist, and gentlemen of the jury, until the conclusion of the trial.

But basically, this is what my defense is, and I have got no qualms in advising the State at this time as to where is the fingerprint evidence? There are some other things that I may bring out later, but so far as physical, factual evidence to link Johnny Williams up with this crime, there is none that Mr. Dean has sug-

gested in his opening argument, and there is none that I am aware of that actually shows that Johnny Williams was, in fact, the perpetrator of this crime.

I appreciate your attention and I ask you to leave your minds completely open until the conclusion of the case. Thank you.

Thank you, Your Honor.

THE COURT: Gentlemen of the jury, the Court is [fol. 13] going to recess for lunch before entering upon consideration of the testimony.

The Court admonishes you at this time you will be kept together for lunch and go with the Bailiff and eat together and return to the courtroom. Do not discuss this case among yourselves nor permit anyone to discuss it with you.

You have only heard at this time the opening argument or statement of counsel, which is their opportunity to tell you what they believe the facts will show. Your minds are to be kept open until you have received all of the testimony, heard the argument of counsel, the charge of the Court, and had the opportunity to deliberate among yourselves.

Avoid being in any place where conversations between witnesses, attorneys, police officers are taking place about this case.

Your deliberations must be based entirely upon that evidence which is admitted by this Court in this courtroom.

With that admonition, I am going to excuse you at this time, remand you to the custody of the Bailiff.

It is now 20 minutes of 12:00. In order that we may [fol. 14] proceed as rapidly as possible, this trial will recommence at 12:45. I will ask that you return promptly at that time.

This Court stands in recess until 12:45.

(Thereupon the jury retired from the courtroom.).

(The trial reconvened at 1:04 p.m., pursuant to the taking of recess, and the following proceedings were had out of the hearing of the jury:)

THE COURT: Can we have all the witnesses, Mr. Dean?

MR. DEAN: Yes.

THE COURT: Mr. Kanner, if you have any witnesses—

MR. KANNER: Your Honor, my two witnesses are not here. They will be here.

THE COURT: All right.

MR. KANNER: Your Honor, if the Court please, with Mr. Dean's permission, I would like to respond to the notice for alibi witnesses, orally, into the record.

[fol. 15] THE COURT: I thought you said you had already done that.

MR. KANNER: Well, I have given the information to Mr. Dean, but he suggested we put it into the record.

THE COURT: All right. You can do that now, Mr. Kanner.

MR. KANNER: At the time that the defendant was supposedly committing this crime, he was at 1720 Northwest 52nd Street at the home of Miss Scotty, I believe it is.

MR. DEAN: Scotty.

THE COURT: You had this information prior to today?

MR. DEAN: Yes, Your Honor.

THE COURT: Would you swear the Interpreter first, please?

(Thereupon Fausto Ossorio was sworn to act as Interpreter during the taking of the testimony.)

THE COURT: Now, please administer the oath, through the Interpreter, to all witnesses.

Is there someone you want sworn in?

[fol. 16] (Thereupon the witnesses were sworn through the aid of the Interpreter.)

MR. DEAN: Your Honor, I have one further detective who is on call.

THE COURT: How many witnesses do you have?

MR. KANNER: Two witnesses, Your Honor. I would like to invoke the Rule.

THE COURT: I am going to hold you, then, responsible for your two that are not here.

MR. KANNER: Yes, sir, Your Honor.

THE COURT: Mr. Ossorio, if you will please explain that the Rule has been requested, which means that all witnesses who are going to testify will have to remain outside of the courtroom. Do not discuss the case among yourselves or with anyone, other than counsel for the State or the defendant, and then not in the presence of any other witness.

Who do you wish first?

MR. DEAN: Mrs. Salas, Your Honor.

(Thereupon the witnesses retired from the courtroom.)

THE COURT: Bring in the panel, please.

[fol. 17] (Thereupon the jury returned to the courtroom.)

THE COURT: Polling has been waived. You may proceed.

MR. DEAN: Thank you, Your Honor. Thereupon—

MARIA SALAS,

was called as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified through the Interpreter as follows:

DIRECT EXAMINATION

BY MR. DEAN:

Q State your name and address, please.

MR. KANNER: If Your Honor please, at this time I would like to voir dire Mrs. Salas as to her fluency in the English language, and have some type of record to determine whether or not she is fluent and how fluent she is and how well she understands English.

MR. DEAN: I object, Your Honor. We are operating through an Interpreter.

MR. KANNER: Your Honor, I think I have the right [fol. 18] to determine, for my own satisfaction and the satisfaction of my clients, that this witness, who I am going to be forced to cross examine, is, in fact, illiterate in the English language.

MR. DEAN: Your Honor, to have an Interpreter, the witness does not have to be illiterate.

THE COURT: Let me just satisfy both sides and ask the witness myself: Mrs. Salas, do you understand what I am saying?

THE WITNESS: (Negative nod of head.)

THE COURT: Now I will let you try.

MR. KANNER: How long have you lived in this country? Mr. Interpreter, would you, please?

(Question propounded through Interpreter.)

THE WITNESS: It is going to be seven years.

(Thereupon the following questions were propounded and answers given through the Interpreter:)

MR. KANNER: What is your employment?

THE WITNESS: I am taking a beauty shop course.

MR. KANNER: Do you drive an automobile?

THE WITNESS: Yes.

[fol. 19] MR. KANNER: How long have you driven an automobile?

THE WITNESS: Since I was fourteen or fifteen years old.

MR. KANNER: Do you have a Florida driver's license?

THE WITNESS: Yes.

MR. KANNER: What type of examination did you take to receive this?

THE WITNESS: The same that everybody takes.

MR. KANNER: Was this a written examination?

THE WITNESS: Yes.

MR. KANNER: Was the examination written in English?

THE WITNESS: No; it was in Spanish.

MR. KANNER: What type of employment have you had prior to being a beauty shop—

MR. DEAN: I will object.

THE COURT: I am going to stop this. It is obvious she does not understand any of the questions you have asked her. She cannot reply in English, and if she does [fol. 20] not understand English, then she cannot intelligently answer questions. I do not see any point in going any further.

MR. KANNER: Okay.

THE COURT: Proceed, Mr. Dean.

MR. DEAN: Thank you, Your Honor.

BY MR. DEAN:

Q State your name and address, please.

A Maria Salas, 2841 Northwest 21st Avenue.

Q Were you living there on March 6, 1968?

A Yes.

Q On that date, did you have an occasion to see the defendant in this case, Johnny Williams?

A Yes.

Q Do you see him in the courtroom?

A Yes.

Q Would you point him out, please?

A (Pointing.)

MR. DEAN: Indicating the defendant, Johnny Williams.

BY MR. DEAN:

Q Approximately what time and where did you see him?

A At my home from 2:00 to 2:30 in the afternoon.

[fol. 21] Q Had you been somewhere prior to seeing him?

A Yes; I went to Food Fair.

Q Did you go to Food Fair alone?

A Yes.

Q When you came home, you were alone?

A Yes.

Q Tell us what happened when you went into your house.

A I came into my home with the packages of the groceries for the week. I had four packages.

I opened the door. I just put in the first package. I left the door open because I was coming in and out.

When I brought in the fourth package with a bottle of Clorox in my hand, I felt something dark, as if the door was being closed. I thought it was my neighbor next door.

MR. KANNER: Your Honor, I object to what the witness thought.

THE COURT: Sustained. Strike it.

BY MR. DEAN:

Q What happened next?

A I thought it was my neighbor next door.

[fol. 22] MR. KANNER: I would like the Court to instruct this witness to testify in response to Mr. Dean's questions rather than what her subjective ideas might have been.

THE COURT: Mr. Ossorio, tell her not to give us her opinion or what she thought, just what she saw and what she did.

Repeat the question, please.

BY MR. DEAN:

Q After you got inside your house with this bottle of Clorox, what happened?

A I felt the door as if it was getting closed. I was going to call my next door neighbor and I didn't have time because that man was there. Then I yelled for the next door neighbor. I said, "Estrella," and then he told me to shut up.

Q Who is "he"?

A (Indicating)

Q Indicating the defendant, Johnny Williams.

Where was he when you first saw him?

A By the door in the kitchen.

Q How far away from you was the defendant?

A As from here, where I am sitting now, to right

[fol. 23] there (indicating).

Q Indicating approximately seven feet.

Was there anyone else at home at the time?

A No.

Q Did the defendant have anything in his hand?

A No.

Q Did he say anything to you?

A He told me to shut up. I kept on yelling and he told me again to shut up and for me to be quiet.

Q What did he do next, if anything?

A And I kept on yelling, and then when he saw—Then, he asked me where my husband was.

Q Did you give him an answer?

A I do not speak English but I understand a few words. I told him—I told him other house. I told him, "In the other house."

And then he told me, "No, he is working."

MR. KANNER: Your Honor, if the Court please, I hate to interrupt the direct examination, but it is apparent to me that the witness understands English when she wants to.

[fol: 24] MR. DEAN: Your Honor, I will object.

THE COURT: Sustained.

MR. DEAN: I move to strike the comment. It is not in the form of an objection.

MR. KANNER: It is in the form of an objection, Your Honor. I object to the use of an Interpreter.

THE COURT: Overruled.

BY MR. DEAN:

Q What did the defendant next say to you, if anything?

A I yelled out loud and he told me to shut up. And then he told me to go toward the bedroom.

I told him, I asked him, "Please. I have my child."

And he told me, "Okay," to be quiet.

When he noticed that I kept on yelling for my neighbor, then he pulled out a pistol that he had in his pocket. He had it inside a bag, a paper bag.

Q What kind of a pistol was it; if you know?

A I don't know anything about those things, but my [fol. 25] husband has a .45 and it was just like the one my husband has.

Q What did the defendant do with the gun, if anything?

A He pulled it out and he showed it to me and for me to be quiet and for me to go to the bedroom.

Q Did you go to the bedroom?

A No. I took off a ring I have that belong to my child and I gave it to him. He broke it and he said it was no good.

Then I gave him my wedding bands, my wedding rings. He put them on his finger and he said it was okay, for me to go to the bedroom.

Q How many rings did the defendant take?

A Two: The wedding band and the solitaire.

Q After he put these on his finger, you said he told you to go to the bedroom?

A Yes. He told me that it was all right for me to give him that but for me to go to the bedroom.

Q Did you go to the bedroom?

A Then when he noticed that I wasn't going to the bedroom, I told him that, "Okay"—when he took the rings—that I was going there, but my kitchen has a [fol. 26] door. I took my wristwatch off and my bracelets. I took them in one hand. I opened the door. I told him, "Okay, okay."

Then I opened the other door. I threw all these pieces of jewelry on top of the table and he just make a gesture as if he was going to take them.

Q Was this still out in the kitchen area?

A Yes; in the kitchen.

Q After he reached for this jewelry, what happened?

A He make a gesture as if he was going to take them, and then I just went toward the garage.

MR. KANNER: Excuse me. I did not understand that.

Miss Reporter, would you read that back?

(The portion of the testimony referred to was read by the Reporter as above recorded.)

BY MR. DEAN:

Q After you went towards the garage, what did the defendant do?

A I don't know because I didn't look back. I was

waiting—I was waiting for a shot to sound or to be [fol. 27] fired.

Then, I opened the door that goes from the garage to the street and then I went to the street and I was yelling.

Q Were you walking or running?

A I was running plenty.

Q Did you see the defendant after that?

A Yes. I waited for him. I saw that he wasn't coming out. He stayed there for about two minutes inside the house.

Then I stood by the door of my home outside and I was waiting for him to come out.

Then I grabbed him here and I called my next door neighbor and I said, "Estrella, call the police."

MR. KANNER: Your Honor, I object as to what she told Estrella.

THE COURT: Overruled. It was in the presence of the defendant.

MR. KANNER: There is no showing that it was, Your Honor.

THE COURT: She said she had him by the collar.

BY MR. DEAN:

[fol. 28] Q When you made this statement to Estrella, was the defendant there?

A Yes.

Q Did the defendant say anything?

A No. He said "shut up." That is the only thing he said.

Q Did he still have the gun in his hand at this time?

A No, he didn't.

Q What happened next?

A Then he let me go. He pushed me and I just fall on him.

Then, when we were practically at the corner, I got hold of him again and I had to let him go.

Q Why did you let him go?

A Because he was stronger than I was.

Q What did you do next?

A Then, when I noticed that I couldn't just follow him—he was running all over the back yard there—I took

the keys that were in the keyhole of the door, because I didn't have time to get the keys out—

Q Was this the door of your house?

A Yes. Then I took the key and I went to my car. [fol. 29] I thought that with my car I would be able to catch him. Then I took the car and Mr. Soler took the driving wheel. Then both of us followed him but in the car.

Q Did you see the defendant again?

A I saw him passing by on the streets and through the back yards running.

Q What did he do when you saw him, after you saw him running through the back yards?

A We stay in the car trying to see if we could catch him. Then I was blowing the horn a lot and hoping that the police car would come by. Then a man that was on his way to school to pick up his children—

MR. KANNER: Your Honor, I object to anything that she says that might be based on hearsay. She would not have the least idea—

BY MR. DEAN:

Q Do not tell us what you think someone else was doing.

You saw another man; is that correct?

A Yes.

Q Did you see the defendant get into any car?

[fol. 30] A Yes.

Q Approximately how far away from your house was this car parked?

A About two blocks.

Q What did you see the defendant do, if anything, when he got to the car?

A He came in the car. He was bent over when he came into the car.

Q Did he remain in the car?

A No. He started and took off.

Q He left in the car?

A Yes.

MR. DEAN: Could I have this marked for identification, please.

THE CLERK: 1-A for Identification.

(Thereupon the photograph was marked as State's Exhibit 1-A for Identification.)

BY MR. DEAN:

Q I show you what has been marked as State's Exhibit 1-A for Identification and ask you if you can identify that (showing to witness)?

A Yes.

Q Where have you seen that car before?

[fol. 31] A I saw it one day driving by my home about a week or two before that happened, and then after, I follow him.

Q Was this the vehicle that the defendant got into that you just described?

A Yes.

Q Mrs. Salas, do you remember how the defendant, Johnny Williams, was dressed?

A He had on green pants and a pullover, kind of tight. It was green, also.

Q Was there anyone else in the car when the defendant got into it?

A There was a dog.

Q Had you seen the defendant, Johnny Williams, before this robbery, before March 6th?

MR. KANNER: Your Honor, I object as to the relevancy.

MR. DEAN: For identification purposes, Your Honor.

THE COURT: If it is for that only, I will overrule the objection.

BY MR. DEAN:

Q Approximately when did you see him?

A I am not sure, but a week or two before that.

[fol. 32] Q Where did you see him?

A Passing by the very same door of my home.

Q Was he walking or was he in a car?

A No; he was in the car.

Q Was it the same car that you saw the day of the robbery?

A Yes.

Q Approximately how long was the defendant inside your house?

A It was a matter of about seven minutes.

Q All this took place in Dade County, Florida?

A Here in Florida.

Q Dade County, Florida?

A Yes.

MR. DEAN: Thank you. Your witness.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. KANNER:

Q What color was the dog in Johnny's car?

A Well, I don't know. It was—he asked me what color it was? I know I saw a dog, but at this moment, [fol. 33] all I was trying to do was catch him. I didn't pay any attention to the dog. He was a big one.

Q How much did the dog weigh?

MR. DEAN: I will object, Your Honor.

THE COURT: Sustained.

MR. KANNER: I think it is very relevant, Your Honor.

THE COURT: I disagree with you. Sustained.

BY MR. KANNER:

Q What breed of dog was it?

A I don't know any of them.

Q Was it possible that the dog was white?

MR. DEAN: Object, Your Honor. Anything is possible.

THE COURT: Sustained.

BY MR. KANNER:

Q Was the dog in Johnny's car a week prior to the robbery?

A Yes.

Q Where was the dog in the car?

A In the back part.

Q On the day of the robbery, where was the dog?

[fol. 34] A In the rear seat of the car.

Q Have you seen this dog again?

A No. At the time he passed by my house.

Q I have some pictures which I would like for you to examine.

MR. DEAN: Your Honor, I will object until they are marked for identification purposes.

THE COURT: Sustained.

MR. DEAN: If you will have the Clerk mark them, I have no objection to her examining them.

MR. KANNER: Defendant's Composite Exhibit 1.

THE CLERK: A-1 for Identification.

(Thereupon the photographs were marked as Defendant's Exhibit A-1 for Identification.)

THE COURT: You may proceed.

BY MR. KANNER:

Q What color was the paper bag that Johnny had his gun in when he came in the house?

A It was the ordinary color, sort of cream.

Q How large was the paper bag?

A (Indicating) More or less that size.

[fol. 35] MR. KANNER: Let the record reflect that the witness is showing a bag approximately 14 inches high; is that correct, Mr. Dean?

MR. DEAN: Approximately.

BY MR. KANNER:

Q What did Johnny do with the paper bag after he took his gun out of it?

MR. DEAN: Objection, Your Honor. The witness did not testify that he got the gun from the bag.

THE COURT: Overruled.

MR. KANNER: Yes.

THE COURT: Go ahead. She can clarify it.

THE WITNESS: Well, he just pulled the gun out of the bag. I don't know what he did with it, with the bag.

BY MR. KANNER:

Q Did he put the bag in his pocket?

A I don't know, because after all this, I didn't know. I had to come here and I don't know.

Q You do not know. You do know that he took the gun out of the paper bag, though?

A Yes.

[fol. 36] Q Was Johnny wearing a mask?

A No.

Q Did he have gloves on?

A No.

Q How long was he inside your house?

A About seven minutes.

Q Now, Mrs. Salas, it is true, is it not, that I and my investigator, Mr. Cardet, went to your house on Thursday, August 8th and Tuesday, August 13th—

A Yes.

Q And I tried to talk to you about this incident?

A Yes.

Q And you refused to talk to me; is that true?

MR. DEAN: Objection, Your Honor.

THE COURT: Sustained.

MR. KANNER: Your Honor, I would like to excuse the jury and argue it.

THE COURT: You may. Take the jury out.

(Thereupon the jury retired from the courtroom.)

MR. KANNER: If Your Honor please, I think I have got the right to attempt to show into the record, [fol. 37] for the benefit of this jury, that defense counsel was there and attempted to talk with her, and for reasons best known to herself, she refused to talk to defense counsel.

I don't think this goes to her competency as a witness, but I think certainly, Your Honor, it goes to her credibility, and I think it is certainly something, Your Honor, that can be argued and should be argued.

I think I have a duty to argue this point to the jury.

The fact that I can subpoena her to take a deposition and she can talk to me whether she wants to or not is

no answer, Your Honor. I think it is important that, for reasons best known to her, and there may be very good reasons, that she refused, even though she has a perfect right to—and I will be the first to concede that she is under no legal obligation to discuss the case with defense counsel—but for reasons best known to the witness, she refused to talk to my investigator and I feel that I should be allowed to bring this out.

MR. DEAN: We object, first of all, that there is no [fol. 38] law, no rule of court, no decision requiring the witness to talk to defense counsel; and second of all, to go into what Mr. Kanner wants to go into is something that is in the witness' mind. This is clearly improper on cross examination of any witness.

THE COURT: Sustained. It is outside the scope of direct. It has got nothing to do with her credibility and she is—

MR. KANNER: Your Honor, while the jury is out, I would like to proffer this into the record.

THE COURT: All right.

MR. KANNER: It is true, is it not, that you refused to talk to Mr. Cardet and myself?

THE WITNESS: Yes.

MR. KANNER: It is true, is it not, also, that you refused to allow us inside the house to take photographs inside the house?

THE WITNESS: Yes.

MR. KANNER: Did Mr. Dean advise you not to talk to Mr. Cardet or myself?

THE WITNESS: No. We told him that Mr. Dean told us that if we wanted to, we could give them the information they wanted, and if we did not have to, we were not obligated.

MR. KANNER: Your Honor, I feel that this is very [fol. 39] important to allow the jury to hear.

THE COURT: It has no bearing on the issues, whether she talked to you or whether she didn't. If she did not, you had every right to bring her in and take her deposition.

MR. KANNER: I appreciate that, Your Honor.

THE COURT: Bring the jury in.

(Thereupon the jury returned to the courtroom.)

THE COURT: Proceed.

BY MR. KANNER:

Q Do you know what a lineup is? All it requires is a yes or no answer.

A Yes. I never saw one but—

MR. KANNER: Miss Reporter, would you read that back?

(The answer referred to was read by the Reporter as above recorded.)

BY MR. KANNER:

Q Did you see the defendant in a lineup?

A No.

Q It is true, is it not, that you testified against the [fol. 40] defendant in another case on May 22nd of this year; is that not correct?

A If I testify against him?

Q On May 22nd.

A Yes; against him, yes.

Q Except for this time on May 22nd, have you seen the defendant between March 6th, the time of the robbery, and today?

A No; I did not see him.

MR. KANNER: Excuse me. Mr. Interpreter, she answered the question.

THE COURT: Tell her not to volunteer anything.

BY MR. KANNER:

Q Were you shown some pictures on the date of the robbery?

A Yes.

Q By who?

A The police.

Q What time?

A At night.

Q Were you shown some pictures subsequent to this Wednesday?

A After the day of the robbery, they came back about three days after.

[fol. 41] Q Was this on a Friday that they came back?

A I am not sure about dates.

Q Did you report the robbery to the police on Wednesday?

A The very same day.

Q Did the police come out to speak with you on that date?

A Right away.

Q Did you give the police the license number of Johnny's car?

A Well, no. It was given by Mr.—I don't know his name.

Q Were you present when the automobile license tag number was given to the police?

A No.

Q Did the police come to your house to show you pictures on Wednesday?

A Yes. They came that very same day, and then afterwards two or three days.

Q Did they come to your house a second time?

A Yes.

Q How many pictures did the policeman bring with him? This is the first time.

[fol. 42] A Several.

Q Is several more than five?

A Yes.

Q Is several more than ten?

A Yes.

Q Is several more than twenty?

A Well, somewhere around there or more.

Q To the best of your recollection, Mrs. Salas, how many pictures did they bring the first time?

A (Indicating) The only thing I can say, that they brought many pictures, like this.

MR. KANNER: Miss Reporter, would you please read back the question.

(The question referred to was read by the Reporter as above recorded.)

THE WITNESS: The first time, they brought several, and the second time, they brought several, but I don't know how many exactly because I did not count them.

BY MR. KANNER:

Q Did they bring more pictures the second time?

A Yes.

[fol. 43] Q How many policemen brought the pictures the first time?

A Two.

Q How many policemen brought pictures the second time?

A There came one in a patrol car and then there came another patrol car.

Q How many policemen, all together, came the second time?

A The second time, two, only two.

Q Who else, besides yourself, viewed the pictures the first time?

A My husband—

MR. KANNER: Your Honor, I would appreciate it if the Court would instruct her again to respond to the questions.

THE COURT: You did not let her answer.

MR. DEAN: That is right.

THE WITNESS: My husband and Mr. Solis.

THE INTERPRETER: That was all she said.

THE COURT: She never got to answer the question. Now she has answered. Proceed.

BY MR. KANNER:

Q Did two people besides yourself examine the pictures the first time?

[fol. 44] A The second time it was when I recognized him.

MR. KANNER: Excuse me, Mr. Interpreter. Would you read the question back, Miss Reporter?

MR. DEAN: Your Honor, can we have a full answer before Mr. Kanner makes an objection?

THE COURT: Sustained.

MR. KANNER: Your Honor, if the Court please, I asked specifically about the first time.

THE COURT: Just repeat the question. Do not ask the reporter to read it back every time. Rephrase it. Go ahead.

MR. KANNER: Miss Reporter, I forgot, frankly, what I asked her.

THE COURT: The question was: "How many people viewed the pictures the first time?"

THE WITNESS: I really don't understand. The first time when the patrol came over or the second time when I recognized him?

MR. KANNER: Mr. Interpreter, I did not hear your response.

(The answer referred to was read by the Reporter as above recorded.)

[fol. 45] BY MR. KANNER:

Q The first time.

A The same people that saw it the first time.

Q How many?

A Mr. Solis, myself, his wife.

Q How many, Mrs. Salas? How many?

A Four.

Q How many viewed the pictures the second time?

A Four.

Q Which of the defendant's features, Mrs. Salas, allowed you to identify him from his picture the second time?

MR. DEAN: I will object, Your Honor, to the form of that question. There has been no testimony that there was any one specific feature.

MR. KANNER: Let's find out, Your Honor.

THE COURT: Sustained as to the form of the question. Rephrase it.

BY MR. KANNER:

Q Mrs. Salas, the first time you saw the pictures, were there face pictures or were there face and full body profile pictures?

[fol. 46] A Only face.

Q The second time that you were shown pictures, were there face pictures or face and profile pictures?

A The front and profile.

Q Was it a profile picture that you initially identified the defendant with?

A There were two together: One front and the other one is profile.

Q Which of the pictures, the profile or the face, were you able to initially recognize the defendant?

A The face.

Q Was it the defendant's eyes that you were able to identify him with in the picture?

MR. DEAN: Object, Your Honor. She said his face.

THE COURT: Sustained.

MR. KANNER: Your Honor, I have a right to ask which of the features of the defendant, in his face, she was able to identify.

THE COURT: It may have been all of them. You can ask the question direct, but do not limit it. It is [fol. 47] suggestive of an answer. Rephrase it.

BY MR. KANNER:

Q What features in the defendant's face and head were you able to identify?

A All of it.

Q Were you able to identify his nose?

MR. DEAN: Objection, Your Honor.

THE COURT: Sustained.

BY MR. KANNER:

Q What were the names of the policemen who came by your house the second time?

A I don't know.

Q What did they tell you when they showed you the pictures, if anything?

MR. DEAN: Objection, Your Honor. That is hearsay.

MR. KANNER: It is certainly not hearsay.

THE COURT: It certainly is.

MR. KANNER: Hearsay as to what?

MR. DEAN: Your Honor, if we are going to have argument, can we have the jury taken out?

THE COURT: Let's not argue in front of the jury. [fol. 48] I sustained the objection. You can ask her if they told her anything. She can give a yes or no answer.

Then, if it is something that has got to do with identification, you may voir dire out of the presence of the jury.

MR. KANNER: Your Honor, let's excuse the jury, then.

THE COURT: Ask the question first. If they did not say anything to her, there is no point in excusing the jury.

BY MR. KANNER:

Q I believe my question was: What, if anything, did they say to you?

MR. DEAN: Object to that question, Your Honor.

THE COURT: Sustained as to the form of it. Ask her if they said anything to her and she can give you a yes or no answer.

BY MR. KANNER:

Q Did the two policemen identify themselves to you as City of Miami Policemen?

MR. DEAN: Objection, Your Honor, hearsay again.

THE COURT: Overruled.

[fol. 49] THE WITNESS: Yes.

BY MR. KANNER:

Q Were they in uniform?

A Yes.

Q Did they tell you why they were there?

A Yes.

Q Were they there together?

A Them?

Q Were the two policemen at your home together the second time?

A Yes.

Q Did they say anything to you about the photographs that they had?

A Yes.

MR. KANNER: I would like to excuse the jury,
Your Honor.

THE COURT: Take them out.

(Thereupon the jury retired from the courtroom.)

MR. KANNER: Did either of the policemen speak
Spanish?

THE WITNESS: No.

MR. KANNER: What reason did they give to you
for being there?

[fol. 50] THE WITNESS: Mr. Solis was the one who
talked to them. They came there and they knocked.

MR. KANNER: Was it your husband who talked to
them?

THE WITNESS: My husband was the one who
opened the door.

MR. KANNER: Did your husband act as an inter-
preter?

THE WITNESS: No. He speaks very little English.
He have to call Mr. Solis.

MR. KANNER: How do you spell your name?

THE WITNESS: Mine? S-a-l-a-s.

MR. KANNER: Off the record. Her name is S-a-l-a-s
and his name is—

MR. DEAN: Nothing off the record, Your Honor.

THE COURT: Sustained.

MR. KANNER: S-a-l-o-s?

THE INTERPRETER: S-a-l-a-s.

THE COURT: That is her name.

MR. KANNER: And the neighbor?

THE WITNESS: S-o-l-i-s.

MR. KANNER: Did Mr. Solis act as an interpreter?

[fol. 51] THE WITNESS: Yes.

MR. KANNER: What did the policemen say to you
about the pictures that they had?

THE WITNESS: That they were bringing those pic-
tures to see if among them there were—that man was
there.

MR. KANNER: Did they tell you that they thought
the defendant was there?

THE WITNESS: No.

MR. KANNER: Did they show you any particular picture more than once?

THE WITNESS: No. No. They showed them all to me and I kept on looking at them until I identify one.

MR. KANNER: How long did you look at those pictures before you identified one?

THE WITNESS: I was looking at them, but right after I saw it—I identified him right away.

MR. KANNER: Which of the features of the defendant enabled you to identify his picture?

MR. DEAN: Object, Your Honor.

THE COURT: Sustained.

MR. KANNER: Your Honor, I would like to proffer [fol. 52] this as long as the jury is out.

THE COURT: Go ahead.

THE WITNESS: This here, what he has here (indicating), his hair, his face, everything, because I will never forget it.

MR. KANNER: Was there something under the defendant's chin that helped you identify him?

THE WITNESS: No. Everything helped me to identify him.

MR. KANNER: What was it that you indicated as being under his chin?

THE WITNESS: Sort of a beard or something that we call a beard, very small.

MR. KANNER: Does he have that now?

MR. DEAN: Objection, Your Honor.

THE COURT: Sustained. It is obvious.

THE WITNESS: I don't know. I haven't even looked at him.

MR. KANNER: I have no further questions.

THE COURT: All right.

MR. KANNER: I have more questions, but let's bring the jury back.

MR. DEAN: Your Honor, can we have the purpose [fol. 53] for all of this questioning by Mr. Kanner?

THE COURT: The purpose of it was, I assume, to find out if the police suggested to her whom to pick out from all the photographs.

MR. DEAN: And Your Honor is excluding any testimony about any conversations that she had with the police officers as being hearsay; is that correct? The defendant certainly was not there. It is clearly hearsay.

THE COURT: There was nothing wrong with the manner in which the police handled it. So, I do not see anything objectionable.

MR. DEAN: All right.

THE COURT: If you want to put the same thing in front of the jury, all right. Bring the jury in.

(Thereupon the jury returned to the courtroom.)

BY MR. KANNER:

Q I have some photographs, which are Defendant's Composite Exhibit 1, which I would like for you to examine (showing to witness).

Are these pictures of your house and of your neighborhood?

[fol. 54] A Yes.

MR. KANNER: Your Honor, I would like to introduce them out of turn, if I might, as Defendant's Exhibit 1.

MR. DEAN: The State has no objection.

THE COURT: Admit them, collectively, as Defense Exhibit 1 without objection.

(Thereupon the photographs were marked as Defense Exhibit A, Cumulative, in Evidence.)

BY MR. KANNER:

Q Am I correct, Mrs. Salas, in understanding that the defendant got into his car on 27th Street and Southwest 20th Avenue, approximately?

A If he came into my home?

THE COURT: Repeat the question.

BY MR. KANNER:

Q Am I correct in understanding that the defendant got into his automobile, when he was escaping, at Southwest 27th Street and 20th Avenue?

THE INTERPRETER: Repeat the question. She does not understand it.

BY MR. KANNER:

Q Where was the defendant's car parked when he [fol. 55] got into it?

A When he came into my home?

Q When he left your home.

A Two blocks from my home.

Q And was this approximately Southwest 27th Street and 20th Avenue?

A Northwest.

Q Excuse me. Northwest. Was this approximately Northwest—

A 27th Street and 21st Avenue.

Q Were you able to attract the neighbors by your hollering and screaming as you pursued the defendant?

A Yes.

Q Were there people congregated where the defendant finally got into his car?

A Yes.

Q Which finger of your hand, Mrs. Salas, were these rings on?

A (Indicating) On this one.

Q When you say "This one," which finger do you mean?

A (Indicating)

Q Were both rings on that finger?

[fol. 56] MR. DEAN: Indicating the finger next to the little finger on the right hand.

THE WITNESS: Yes.

BY MR. KANNER:

Q One was a wedding ring?

A Both of them.

Q Wedding ring and an engagement ring?

A Yes.

Q Did your neighbor, Estrella, see the defendant?

MR. DEAN: Objection, Your Honor, as to what someone else might have seen.

THE COURT: Sustained. There is a way to rephrase it.

BY MR. KANNER:

Q Was your neighbor, Estrella, attracted by your screams as you left the house?

A Yes.

Q Did she come to her window?

A No. When I came out, they were already out due to my yelling.

Q Who do you mean by "they"?

A Mr. Solis, and the lady at the corner of my house.
[fol. 57] Q Is this Estrella?

A No. Estrella is the next door neighbor.

Q Was Estrella outside?

A Yes. She was outside when she heard my yelling.

Q How long did Estrella stay outside?

A I don't know, because I just went out on my car.
I don't know how long she was there.

Q Was Estrella outside when you left in your automobile?

A Yes.

Q Then Estrella and the defendant were outside at the same time; were they not?

A Estrella and the defendant?

Q Yes.

A Yes, because she saw him coming out.

Q Now, there were people in addition to Estrella and your neighbors who saw the defendant get into his car; were there not?

MR. DEAN: Object, Your Honor, as to what someone else might have seen.

THE COURT: Strike the word seen. Insert the word "present."

BY MR. KANNER:

[fol. 58] Q How many people were outside on the street?

MR. DEAN: I will—

MR. KANNER: When the defendant got into his automobile?

MR. DEAN: Objection, Your Honor, unless we have an area. It is 2:30 in the afternoon.

MR. KANNER: In the visible presence of the automobile.

THE COURT: Overruled.

THE WITNESS: Several neighbors came out. I did not count them, so I don't know. I can't tell you how many were there.

MR. KANNER: Excuse me. Miss Reporter, would you read that back.

MR. DEAN: Your Honor, I will object.

THE COURT: "Several neighbors were present. I don't know how many; I did not count them."

MR. KANNER: Thank you, Your Honor.

BY MR. KANNER:

Q After the robbery, Mrs. Salas, did you see any of the clothes that the defendant was wearing at that time?

A If I saw some of the clothing he was wearing? [fol. 59] I do not understand the question.

Q Have you seen the clothes that the defendant wore during the robbery?

A No.

Q Have you seen the gun again?

A No.

MR. KANNER: You may inquire.

THE COURT: Any redirect?

MR. DEAN: No, Your Honor. No redirect.

THE COURT: Tell the witness she may wait outside. We will not excuse her yet. Call your next witness.

(Witness excused.)

MR. DEAN: Mr. Pay.

THE COURT: Will he need an interpreter?

MR. DEAN: No, Your Honor.

Thereupon—

GILBERTO PAY,

was called as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEAN:

Q State your name and address, please,
[fol. 60] A My name is Gilberto Pay, 1916 N. W.
33rd Street.

Q Mr. Pay, calling your attention to March 6, 1968,
I ask you if you had an occasion to be in the vicinity of
27th Street between 19th and 20th Avenue.

A Yes, sir.

Q Here in Dade County?

A Yes, sir.

Q Which street were you on at the time?

A I was on 19th Avenue going north.

Q I will ask you if you had an occasion to see anything unusual?

A Yes, sir; I did. I saw Mrs. Salas. She was going south on 19th Avenue and—

Q Was that the woman who just testified?

A Yes, sir.

Q Was she in a car or on foot?

A She was in a car.

Q All right, sir. Were you in a car or were you on foot?

A I was in a car, too.

Q All right, sir. Were you going toward her?

[fol. 61] Yes, sir.

Q What did you observe?

A I saw that she was making a blowing of the horn and screaming and she was, you know, pointing outside the window.

Q What did you do, sir?

A I stopped, you know. I pulled to the side, so I don't know, I thought that she had an accident or something like that. I pulled to the side of the road.

Q Did you get out of the car or did you remain in your car?

A No. I remain in my car, sir.

Q I show you what has been marked as State's Exhibit 1-A for Identification and ask if you can identify that, sir (showing to witness)?

A Yes, sir.

Q Where have you seen that car before?

THE COURT: Could you speak up a little bit, sir, and speak into the microphone.

THE WITNESS: I saw the car. It was parked on 21st Avenue and 27th Street.

BY MR. DEAN:

Q Which street was it on? Do you remember whether [fol. 62] it was on the avenue or on the street?

A On the avenue.

Q It was on the avenue? And did you have an occasion to write down the license number of that car?

A Yes, sir; I did.

Q After you wrote down the license number, what did you do with it?

A I gave it to the police officer.

Q Was this a uniformed police officer?

A Yes, sir.

Q City of Miami?

A City of Miami.

Q Did you notice anyone or anything near the car?

A I saw a person get in the car.

Q Could you identify that person?

A Really, I can't, sir.

Q Did you see what he was wearing?

A He was wearing a green T-shirt. That is all I was able to see.

Q Could you tell, sir, whether he was white or colored?

A He was colored.

[fol. 63] Q Was there anyone else in the car?

A Not a person. It was a dog.

Q There was a dog in the car?

A Yes.

Q Where was the dog?

A In the back seat.

Q Do you know what color it was?

A I saw white.

Q Do you know what kind of a dog it was?

A No, sir.

Q After you saw this person get in the car, what did the person do?

A He got in the car and took off going south.

Q And you remained there until the Police came?

A Yes, sir.

MR. DEAN: I have no further questions, Your Honor. Thank you.

CROSS EXAMINATION

BY MR. KANNER:

Q Just one question, Mr. Pay.

A Yes, sir.

Q To the best of your recollection, how many people [fol. 64] were present when the defendant got into his car at the scene?

A Quite a few was there, sir.

Q Say more than three or four or five?

A Right, sir.

Q Do you have any idea, just approximately, how many?

A No, sir. There was quite a few because it was a house next to the corner and the people who lived there was outside.

MR. KANNER: No further questions.

MR. DEAN: I have no further questions.

THE COURT: You are excused, sir. Please remain outside the courtroom. Call your next witness.

(Witness excused.)

Thereupon—

HERBERT W. WELLS,

was called as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEAN:

[fol. 65] Q State your name and official position, please.

A Officer Herbert W. Wells, City of Miami Police Officer, Dade County, Florida.

Q Thank you, sir. Were you so employed in that capacity on March 6, 1968?

A Yes, I was.

Q On that date, did you have an occasion to investigate a robbery that took place at 2841 N. W. 21st Avenue?

A Yes, I did.

Q During your investigation, did you have an occasion to receive a license number from someone?

A Yes, I did.

Q From whom, sir?

A Mr. Ray (phonetic), I believe his name was.

Q Pay?

A Pay or Ray; yes, sir.

Q How was that license number given to you?

A It was given by him to me while I was talking to the victim.

MR. KANNER: Excuse me. I did not understand [fol. 66] the last part of your answer. While you were talking to who, sir?

THE WITNESS: The victim.

MR. KANNER: Excuse me. I just did not hear you.

BY MR. DEAN:

Q Was that Maria Salas, the lady that is outside?

A Yes, it is.

Q Did Mr. Pay give you the license number on a piece of paper or verbally or how did he give it to you, sir, as you remember?

A I don't remember the exact way he gave it to me.

Q And you had occasion to make note of it in your report?

A Yes, I did.

MR. DEAN: I have no further questions.

THE COURT: Cross.

MR. KANNER: I have no questions.

MR. DEAN: You are excused, Officer.

THE COURT: Does either side want this officer to remain?

MR. DEAN: No, Your Honor.

THE COURT: You are excused.

[fol. 67] (Witness excused.)

MR. DEAN: Can we just have a brief recess? I am waiting for witnesses.

THE COURT: Court will be in recess for ten minutes. Take the jury out.

(Thereupon the jury retired from the courtroom.)

(Thereupon a short recess was taken, after which the following proceedings were had out of the presence of the jury:)

THE COURT: Is the State ready?

MR. DEAN: State is ready.

THE COURT: Are your people here yet?

MR. KANNER: Yes, Your Honor.

THE COURT: Can we swear them while the jury is out and instruct them as to the Rule?

Would you swear these three witnesses, please?

(Thereupon the witnesses were duly sworn.)

THE COURT: The Rule has been requested, and this means you are going to have to remain outside of the [fol. 68] courtroom and not discuss the case among yourselves or with anyone, other than counsel, and then not in the presence of each other.

(Witnesses retire from courtroom.)

(Thereupon the jury returned to the courtroom.)

THE COURT: Proceed.

Thereupon—

A. W. MITCHELL,

was called as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEAN:

Q State your name and official position, please, sir.

A A. W. Mitchell, Sergeant of Police, Miami Police Department, Dade County, Florida.

Q You were so employed in that capacity on March 6, 1968, up unto the present time?

A Yes, sir.

Q Do you know the defendant, Johnny Williams?

A Yes, sir.

Q Would you point him out, please?

[fol. 69] A Right there (indicating).

MR. DEAN: Indicating the defendant, Johnny Williams.

BY MR. DEAN:

Q Did you have occasion to participate in his arrest?

A Yes, I did.

Q For the offense of robbery?

A Yes.

Q Where was the arrest made, sir?

A At his home.

Q 1049 N. W. 83rd Street?

A I believe that is it; yes, sir.

Q I show you what has been marked, Detective Mitchell, as State's Exhibit 1-A and ask you if you can identify that, sir.

A Yes. That is a T-Bird belonging to the defendant.

MR. KANNER: I object to any conclusion of the witness. He can testify where he took the picture or where the car was. I do not know if there is anything in evidence about who owns the automobile.

THE COURT: Sustained as to the conclusions. Strike that portion of his answer.

[fol. 70] BY MR. DEAN:

Q Can you identify where you have seen what that photograph represents before, sir?

A This photo represents a car parked at the defendant's home.

Q It was a photo taken of that car on the date of the arrest?

A Yes, sir.

Q Is this the scene as you saw it?

A Yes, sir.

MR. DEAN: I have no further questions, Your Honor.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. KANNER:

Q Mr. Mitchell, what day was this arrest made, sir?

A This was the 11th of March.

Q I believe that was a Monday; was it not, sir?

A I believe so; yes, sir.

Q Who accompanied you on the search?

A That was Sergeant Horne, Phil Horne.

Q What department is he with?

[fol. 71] A He is with the Miami Police Department.

Q This address of the defendant, that is outside the city limits of Miami; is it not?

A Yes, sir; it is.

MR. KANNER: Your Honor, I have no further questions. I would like to excuse the jury.

THE COURT: Take the jury out.

(Thereupon the jury retired from the courtroom.)

MR. KANNER: Your Honor, I would like these charges to be dismissed against the defendant on the grounds that he was unlawfully arrested by two City of Miami Policemen outside the corporate areas of the City of Miami, and that this Court, therefore, has no proper jurisdiction over the defendant, and I cite to the Court the case of City of Coral Gables vs. Giblin, 127 So. 2d 914, where the Third District Court said this, Your Honor—and they talk about, Your Honor, whether Judge Giblin was arrested inside the City or outside the City and whether it was made in fresh pursuit or whether it was not.

The Court says this: "This contention would merit further examination and discussion were it not for the [fol. 72] obvious lack of authority of a municipal police officer to pursue and initially arrest an offender beyond the boundaries of the municipality."

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"No authority has been cited us, and our research fails to disclose any statutes, special or general, that authorizes a municipal police officer to pursue and initially arrest an offender beyond his municipal territorial limits.

"See opinion of Attorney General, Florida, No. 55-24, 1955 . . ." And they cite two other cases.

On these grounds, Your Honor, I move that the charges be dismissed.

MR. DEAN: Your Honor, first of all, it is improper, in a motion to dismiss, to allege illegal arrest.

The State would move to strike defendant's motion as sham on that basis.

Second of all, the defendant's arrest cannot be attacked at this point, since he is in front of the jurisdiction of the Court.

THE COURT: That is the trouble. This is not timely made. It cannot be raised during trial. I will have to deny it.

[fol. 73] MR. KANNER: I have no further questions.

Yes, I do have some questions of Officer Mitchell not pertaining to the motion.

THE COURT: Bring the jury in.

(Thereupon the jury returned to the courtroom.)

BY MR. KANNER:

Q Just one further question, Officer: Was a search made of the defendant's automobile at the time of the arrest?

A Yes, sir; I think we did search it.

Q With the defendant's permission?

A That is right; yes, sir.

Q Now, was a search made of the defendant's premises at the time of the arrest?

A No, sir. We did not search the premises.

MR. KANNER: I have no further questions.

THE COURT: Does either side wish the officer to remain?

MR. KANNER: No. I have no need for Officer Mitchell.

THE COURT: You are excused.

(Witness excused.)

MR. DEAN: I have no further questions, Your [fol. 74] Honor. State rests.

MR. KANNER: The State rests?

MR. DEAN: Yes.

MR. KANNER: I would like to excuse the jury, Your Honor.

MR. DEAN: Before excusing the jury, I would rest subject to the introduction of State's Exhibit 1-A into Evidence.

MR. KANNER: I have no objection.

THE COURT: Without objection, then, admit State's Exhibit 1-A for Identification into Evidence as State's Exhibit 1.

(Thereupon State's Exhibit 1-A for Identification was marked as State's Exhibit 1 in Evidence.)

THE COURT: The State is resting at this time?

MR. DEAN: Yes, Your Honor.

THE COURT: We will have to excuse the jury for just another few minutes.

(Thereupon the jury retired from the courtroom.)

MR. KANNER: Your Honor, I would like to move for a directed verdict on the robbery charge at this [fol. 75] time on the grounds that the evidence presented, without any corroboration, does not prove beyond and to the exclusion of every reasonable doubt the defendant's guilt, and that the evidence not corroborated is conceivably consistent with a reasonable hypothesis of innocence.

THE COURT: I will deny it at this time.

Bring the jury back in.

(Thereupon the jury returned to the courtroom.)

THE COURT: Call your first witness.

MR. KANNER: She is coming, Your Honor.

Would you please take the stand, Mrs. Williams?

Thereupon—

VANILLA WILLIAMS,

was called as a witness on behalf of the defendant and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANNER:

Q For the record, would you please state your name.
[fol. 76] A Vanilla Williams.

Q You are married to the defendant, Johnny; are you not?

A Yes, I am.

Q How long have you been married?

A Twelve years.

Q Where were you and Johnny on Wednesday, the 6th of March, after 12:00 o'clock in the afternoon?

A State your question again.

Q Where were you, Mrs. Williams—Were you with Johnny Williams on March 6th when this robbery supposedly took place?

A Yes. Yes, I was.

Q Where were you and Johnny after noontime?

A We had gone over to my girl friend's house.

Q Who is that?

A Mary.

Q What is her last name?

A Scotty.

Q Now, did the defendant go with you?

A Yes.

Q What time did you get there?

[fol. 77] A I guess between 12:00, 12:30.

Q What time did you leave, to the best of your recollection?

A It was late in the evening.

Q Well, now, this jury is going to want to know a little bit better than "Late in the evening."

A I guess around—I can't say the time because I don't know. It was late in the evening.

Q Was it dark?

A No.

Q By evening, you mean afternoon?

A Yes.

Q Now, did you leave before suppertime?

A Yes. I had to go home and cook.

Q When you say "Late in the afternoon or the evening," what is the best recollection that you have, Mrs. Williams? These folks want to know, now, or, if you do not know, just tell me.

A I don't know; no.

Q Okay. Where is Mary Scott's house?

A On 17th Avenue—Off of 17th Avenue.

Q Did you leave after 2:30?

A Yes; it was after 2:30.

Q After 2:30?

[fol. 78] A Yes.

Q Did the defendant stay with you?

A Yes.

Q In Mrs. Scott's house?

A Right.

Q What did you and Mrs. Scott and the defendant do or talk about; anything?

A Well, he didn't do very much talking. We was talking.

Q Where was the defendant?

A Well, when we first went in, all of us, you know, went in together, but after that, he went in the back.

Q In the back? What do you mean by that?

A It was a room back there. He went to lay down. He didn't feel very well.

Q Did he ever leave the house except with you?

A No.

Q Is there a door or anything out of this back bedroom?

A No. It is a bedroom.

Q Now, how is it that you are able to pinpoint this date down?

[fol. 79] A What, the 6th?

Q That is right.

A I know the 6th of every month.

Q Why? These jurors are grown people, now.

A Well, that is the time my period comes on.

Q Now, when you left the house, whose car were you going in, by the way?

A We had Johnny's car.

Q What time do you think you got there?

A Between 12:00 and 12:30.

Q What time, to the best of your recollection, did you leave the house?

A It was late in the evening.

Q Did you notice whether Johnny left his keys in the automobile when you went in there; do you remember whether he did?

A No, I don't.

Q You do not remember?

A No.

Q What, if anything, did you notice about the automobile when you came out, so far as its position was concerned?

[fol. 80] MR. DEAN: I will object, Your Honor. It is a leading question.

THE COURT: I will overrule that. Answer the question, if you can.

THE WITNESS: What was the question?

BY MR. KANNER:

Q What, if anything, did you notice about the position of the automobile when you came out?

A It looked like it had been moved.

MR. DEAN: Objection, Your Honor, as to what it looked like.

THE COURT: Overruled.

BY MR. KANNER:

Q Was it forward or backward?

A No. It just wasn't in the same spot where I thought we had parked it at.

MR. KANNER: I have no further questions.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. DEAN:

Q Well, it was not in the same spot where you had parked it because Johnny had been out committing a robbery; isn't that true?

[fol. 81] MR. KANNER: Your Honor, I object to that, It is outside the scope of cross examination. It is totally improper. It is harassing and belittling and arguing with the witness.

MR. DEAN: If he does not want her to answer it, I will withdraw it, Your Honor.

THE COURT: All right.

BY MR. DEAN:

Q Mrs. Williams, approximately what time did you get to Mary's house?

A Around 12:00, 12:30.

Q And just the two of you went, you and Johnny?

A Yes.

Q About how long have you known Mrs. Scotty?

A I have known Mary for quite some time.

Q Just estimate, as best you can.

A Around a year.

Q About a year?

A Yes. A little longer.

Q What car did you drive over to Mrs. Scotty's house?

A We drove Johnny's car.

Q Was that a Thunderbird?

[fol. 82] A Yes.

Q White Thunderbird?

A Yes.

Q Mrs. Williams, I show you what has been marked as State's Exhibit No. 1, and ask you if this is the car (showing to witness)?

A (Affirmative nod of head.)

Q This is Johnny's car?

A Yes.

Q Do you have any dogs?

A Yes; we do have.

Q How many do you have?

A Three.

Q Did you take any?

A Four.

Q Did you take any of them with you when you went to the Scotty's house?

A No.

Q What kind of dogs do you have?

A A Great Dane, German shepherds and a terrier, toy terrier.

MR. KANNER: One more. That is three.

BY MR. DEAN:

Q You state a Great Dane—

A And another shepherd.

[fol. 83] Q Two German shepherds?

A Two big shepherds; yes.

Q Approximately how long were you at Mrs. Scotty's house before Johnny laid down?

A It wasn't very long, 'cause it was right after we had—just right after we had got in the house good. I guess about ten minutes.

Q Did you have anything to eat or drink before your husband laid down?

A I don't drink.

Q Did you see him eat or drink anything?

A No.

Q Would you say that it would be correct that Mr. Williams laid down at approximately 1:00 o'clock?

A I don't think it was that late.

Q A little earlier or a little later?

A I don't think it was that late; I don't know.

Q Earlier?

A About ten minutes after we got there.

Q Did he go to one of the bedrooms in the house?

A Yes.

[fol. 84] Q Was the door open or closed?

A It was open, cracked like.

Q Did you have an occasion to go in the bedroom at all from the time he went in to lay down until he got up?

A I peeped in there. I didn't go in.

Q You did not go in to have any conversation or anything?

A No.

Q You stated that from the time you got to Mrs. Scotty's house until you left, Johnny did not leave; is that correct?

A No; he did not leave.

Q Did you have occasion to leave the house?

A No; I didn't leave.

Q Did Mrs. Scotty have occasion to leave the house?

A No; she didn't leave.

Q In other words, all of you were there from approximately noon or a little bit before until late afternoon?

A Right.

Q Did anyone else come to the house, that you know [fol. 85] of, while Johnny was sleeping?

A Somebody knocked on the door, but who came to the door, I don't know 'cause I didn't bother to look.

Q You did not have any conversation with them?

A No. I didn't have any conversation.

MR. DEAN: Excuse me, Your Honor.

I have no further questions, Your Honor. Thank you.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. KANNER:

Q One question: Do you own a white dog?

A No, sir.

MR. KANNER: No questions, Your Honor.

THE COURT: You are excused.

MR. KANNER: Would you please ask Mr. Scotty to come in and testify?

(Witness excused.)

[fol. 86] Thereupon—

MARY SCOTTY,

was called as a witness on behalf of the defendant and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANNER:

Q. Would you please sit down beside the Court Reporter.

Would you please tell the jury your name.

A. Mary Scott.

Q. Where do you live?

A. 1720 N. W. 52nd Street.

Q. Now, on Wednesday, March 6th, did you see the defendant and Mrs. Williams?

A. Yes, I did.

Q. How long have you known Mr. and Mrs. Williams?

A. Well, a little over a year.

Q. Would you tell me where you saw them?

A. On March 6th?

Q. Yes.

A. At my apartment.

[fol. 87] Q. Would you tell the jury, Mrs. Scotty, what time of day you saw them.

A. Well, it was about—it was about 12:00 o'clock, because I was just getting up.

Q. 12:00 o'clock lunch time or 12:00 o'clock—

A. Lunch time.

Q. Pardon me? 12:00 o'clock?

A. About that.

Q. How long were they there?

A. Up until about 7:00, because I was fixing to get dinner and she said she had to go home and get dinner, also.

Q. Where was Johnny Williams during all this time?

A. Well, most of the time he was in my living room for a few minutes after he got to my house, and then

he said that he didn't feel good or something. He went in my bedroom and he laid down, across my bed.

Q Did he have occasion to leave between 12:00 and 7:00?

A No, he didn't.

Q Was he there all the time?

A Yes, he was.

[fol. 88] Q Now, how are you able, Mary, to pin down this date of March 6th? Now, this is almost six months ago.

A Yes, I know. Because, let's see, on March 8th, I was back to the hospital. I had just gotten out and he had been coming by.

Q You are talking too fast for this jury and for me, too.

A On March 8th, I was readmitted in the hospital. He had been coming by, you know, during the week to see if anything I needed, you know, anything, 'cause my husband was out of town. So, March 6th, he was there, because I remember that because I went to the hospital two days after, on the 8th.

MR. KANNER: You may inquire.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. DEAN:

Q Mrs. Scotty, what month and day did this take place, that you are referring to?

A It was in March.

Q What day?

A On the 6th, because I went to the hospital on the 8th.

[fol. 89] Q Could it have been in February?

A No. It couldn't have been February, 'cause I was in the hospital on February.

Q Do you remember appearing in my office at 9:40 a.m. this morning?

A Yes, I do.

Q Do you remember giving testimony?

A Yes, I do.

THE COURT: Have you got a copy for Mr. Kanner?

MR. DEAN: No, I do not, Your Honor.

THE COURT: He can look over your shoulder.

BY MR. DEAN:

Q All right. Do you remember this question and this answer:

"Question: Okay. Was there an occasion before Johnny Williams was arrested when he and his wife were at your house?

"Answer: Yes, they were."

Do you remember that, ma'am?

A Yes, I do.

Q Do you remember this question:

[fol. 90] "Question: On what day was that?

"Answer: Well—it was—I think it was the 6th of February, like I said two days before I went back to the hospital. See, I was released on the—anyway, I brought my papers from there with me as to when I was released, then I went back.

"Question: Do you think it was about the 6th of February?

"Answer: Right."

A Yes; I remember that.

Q Is that correct or incorrect?

A That is correct, but I was mistaken about the month, because the reason I know I was mistaken, I got my bill from the hospital today and it was in March, not in February.

Q Approximately what time did Mr. Williams lie down?

A Approximately, I would say, 12:15, because he went in the living room no more than ten minutes after he came by my house.

Q Okay. Could you give me a time, approximately, that he went to lie down?

A I said approximately 12:15, you know, 12:30.

[fol. 91] Q About 12:15 or 12:30 he went to lie down?

A Yes.

Q Did Mr. Williams have anything to eat or drink before he laid down?

A No—Maybe he had a beer, because I had some beer at the house. I think he had one. I don't remember.

Q I would read you this question and answer, ma'am:

"Question: What time did he leave you and go and lie down? Just approximately?"

"Answer: Approximately 2:00, maybe, 'cause we sat there and talk, we had a couple of beers—approximately 2:00 o'clock."

Do you remember that question and answer?

A Yes, I do.

Q Is that correct or incorrect?

A That is incorrect, because he wasn't there—he didn't sit up with us that long, so, it couldn't have been no 2:00.

[fol. 92] Q So, the testimony would be incorrect, then?

A Which one?

Q The statement made this morning.

A This morning; yes.

Q At 9:40.

While you were there with Mrs. Williams, did anyone else come to the house?

A A fellow came to the house; yes, he did.

Q Did he come inside the house?

A No, he didn't.

Q Did Mrs. Williams have any conversation with him?

A Yes, she did, because I didn't know who he was.

Q Do you know approximately how long she talked with him?

A No, I don't.

Q Had you ever seen him before?

A Had I ever seen him before?

Q Yes, ma'am.

A No, I haven't.

Q It is your testimony, then, that Johnny Williams [fol. 93] and Vanilla Williams and yourself were at your house on March 6th from approximately 12:00 o'clock noon until approximately 7:00 o'clock that evening?

A Yes.

Q And Johnny Williams never left?

A No.

Q And Mrs. Williams never left?

A No.

Q And you never left?

A No.

MR. DEAN: I have no further questions. Thank you, ma'am.

MR. KANNER: No questions.

THE COURT: You are excused. Thank you.

(Witness excused.)

MR. KANNER: Johnny, would you take the stand?

Thereupon—

JOHNNY WILLIAMS,

the defendant herein, was called as a witness in his own behalf and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANNER:

[fol. 94] Q Have you ever been convicted of a felony?

A Yes, sir; I have.

Q Did you commit this crime?

A No, sir.

Q I show you here Defendant's Exhibit 1 and ask you to examine it (showing to witness).

Have you examined those?

A Yes, sir.

Q Have you been inside that house?

A No, sir; I haven't.

MR. KANNER: You may inquire.

CROSS EXAMINATION

BY MR. DEAN:

Q Mr. Williams, I assume that at the time of this robbery, you were allegedly at Mrs. Scotty's house; is that correct?

A If you are referring to the robbery that is supposed to occurred on March 6; yes.

Q Approximately what time did you arrive there?

A Well, it was between 12:00 and 12:30 that day.

[fol. 95] Q Referring to State's Exhibit 1, is this your car (showing to witness)?

A Yes; this is my automobile.

Q And that is the car that you used that day?

A Yes, sir.

Q Did you leave the keys in the car?

MR. KANNER: Would you pinpoint the time and the place, Mr. Dean, please?

BY MR. DEAN:

Q March 6th, between 12:00 noon and 7:00 o'clock p.m.?

A I remember leaving the keys in it; yes.

Q Approximately what time did you lie down?

A After we got there, you mean?

Q Well, did you lie down after you got there?

A After we was there about ten, fifteen minutes, I left my wife and Mary watching TV and conversing, and I didn't feel too well. I had a headache and I asked her would it be all right to lie across the bed for a while, and I just slept longer than I intended to. So, I was asleep for a pretty good while before my wife woke me.

[fol. 96] Q Did you feel bad because it was the 6th of the month?

A No; I didn't feel bad because it was the 6th of the month.

Q You said you have been convicted of a felony. Isn't it more than one?

MR. KANNER: Your Honor, I object and ask to excuse the jury.

THE COURT: You opened the door. He can ask him how many times.

MR. KANNER: Your Honor, I would like to present law..

THE COURT: Take the jury out.

(Thereupon the jury retired from the courtroom.)

MR. KANNER: Judge, we have come too far to have a mistrial. I would like to cite to the Court the case of McArthur vs. Cook, which is a Civil case, 99 So. 2d 565, and in McArthur vs. Cook, Your Honor, they discussed the fact that the rules, so far as impeachment of witnesses are concerned, are identical in Civil and Criminal cases, and they go on and they say this, after citing Mead vs. State, which is really the landmark case in [fol. 97] Florida, although it really does not answer the question of how many times:

"We there further emphasized that the proper procedural approach is simply to ask the witness the straight-forward question as to whether he had ever been convicted of a crime. The inquiry must end at this point unless the witness denies that he has been convicted. In the event of such denial the adverse party may then in the presentation of his side of the case produce and file in evidence the record of any such conviction. If the witness admits prior conviction of a crime, the inquiry by his adversary may not be pursued to the point of naming the crime for which he was convicted."

Then it goes on to say, "If the witness so desires. . . ."

Now, Your Honor, in all candor to the Court, there is one case which I have here that I will find in a second—I think it was Lockwood vs. State, 107 So. 2d 770, where this was the testimony:

"Have you ever been convicted of a crime. . . ."
[fol. 98] "Answer: Yes."

And the question was:

"How many times?"
"Answer: Once."

Then there was an objection.

Your Honor, there is dicta in the Lockwood case to the extent—and it is just nothing but dicta, Your Honor—but to the extent that he may, then, if the defendant has been convicted more than once, that the prosecutor may then ask one more question: How many times.

But it is certainly, I think, only dicta, Your Honor. I think that the law in Florida as stated in McArthur vs. Cook, that the inquiry must end when the defendant admits that he has been convicted, and under no circumstances, Your Honor, is the State Attorney to be allowed to recite the crimes for which the defendant has been convicted.

I submit to the Court, Your Honor, that the inquiry must end once the defendant has admitted that he has been convicted and that there is no further inquiry permissible.

MR. DEAN: I do not tend to go to specific crimes, Your Honor.

[fol. 99] The defendant stated he has been convicted of a felony, and I intend to show he has been convicted of more than one.

THE COURT: I think the law is clear on that.

MR. KANNER: I feel that in the Lockwood case, Your Honor, where they discuss it, that it is clear from the Lockwood case that that is dicta.

Lockwood discusses Mead vs. State and they say something to the effect, well, if he has been convicted, maybe they can ask it, but they really do not decide it, Your Honor.

THE COURT: Then we really do not have any firm knowing on the point, one way or the other, and I have always understood that those two questions can be asked, and had you not opened the door on direct examination, your point might be stronger.

I am going to let him ask how many times and that is all.

MR. DEAN: Yes, sir.

THE COURT: I will not permit the question the way you phrased it; rephrase it.

MR. DEAN: Yes, Your Honor.

[fol. 100] (Thereupon the jury returned to the court room.)

BY MR. DEAN:

Q. Mr. Williams, how many times have you been convicted of a felony?

MR. KANNER: I will stipulate that he has been convicted six times.

THE COURT: So stipulated.

MR. DEAN: No further questions.

THE COURT: Do you have any redirect?

MR. KANNER: Defense rests.

THE COURT: Do you have any rebuttal?

MR. DEAN: Yes, Your Honor.

THE COURT: Call your first rebuttal witness.

MR. DEAN: Officer Wells.

Thereupon—

HERBERT W. WELLS,

was recalled as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

MR. DEAN: Mr. Robbins, ask Mrs. Scotty to come in and stand, please, and not say anything.

[fol. 101] (Mrs. Scotty enters the courtroom.)

MR. DEAN: Thank you, ma'am. You can go.

(Mrs. Scotty retired from the courtroom.)

BY MR. DEAN:

Q Officer Wells, did you have an occasion to see the woman who just came into the courtroom identified as Mary Scotty, in the yellow dress?

A Yes.

Q Did you see her when she came into the courtroom just now?

A Yes, I did.

Q Have you seen her previously?

A Yes.

Q Did you have an occasion to see her on March 6, 1968?

A Yes, I did.

Q Was this while you were investigating the robbery at the home of Maria Salas?

A Yes.

Q Under what circumstances did you see Mrs. Scotty?
[fol. 102] A I was inside the house making the report out.

THE COURT: What house, Officer?

THE WITNESS: It was the house of the victim.

THE COURT: Tell the jury the address.

THE WITNESS: 2841 N. W. 21st Avenue.

I was making the robbery report out, talking to the victim, when—I didn't know the name of the lady at the time—came and knocked on the door and asked for directions to a certain place.

BY MR. DEAN:

Q Did you have occasion to talk to her?

A At the time, I did. I explained the direction to where she was going, but I don't remember.

Q You do not remember exactly what was said?

A No, I don't.

Q Approximately what time was this?

A It was approximately between 3:40 and 3:50.

Q How do you set the time, Officer Wells?

A Well, I arrived on the scene at 3:40 p.m., and I had just started making the report. So, it was between 3:40 and 3:50 when she came by.

[fol. 103] MR. DEAN: I have no further questions, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. KANNER:

Q What about Mrs. Scotty's appearance at the time, Officer Wells, attracted your attention to her?

A Well, she approached me and—What do you mean by that, sir?

Q Do you remember what she was wearing that day?

A As far as the clothing, no, I do not.

MR. KANNER: I have no further questions.

THE COURT: Any redirect?

MR. DEAN: No, Your Honor.

THE COURT: You are excused, Officer.

(Witness excused.)

THE COURT: Do you have any further rebuttal?

MR. DEAN: Could I have just one moment, Your Honor?

THE COURT: Yes. Do you have any further witness? [fol. 104]

MR. DEAN: No, Your Honor.

THE COURT: Do you have any surrebuttal?

MR. KANNER: Defense rests.

I would like to excuse the jury and go over the charges.

THE COURT: That is permissible. That will take about ten minutes or so.

Take the jury out.

(Thereupon the jury retired from the courtroom.)

MR. KANNER: We are moving along so fast, I would like to take about ten minutes.

THE COURT: I have no objection.

Does anybody have any charges typed up?

MR. KANNER: Yes, sir.

MR. DEAN: Do you have any copies?

(Handing to Court and Mr. Dean.)

THE COURT: We will take Defendant's Requested Charge No. 1 first.

Defendant's Requested Instruction No. 1 is denied. After 1955, the Statute was changed and armed robbery and robbery were merged into a single Statute and this was no longer necessary.

[fol. 105] It is sufficient to prove that a person used force, fear or violence. This instruction was proper before 1955 but not after 1955. No. 1 is denied.

No. 2—

MR. KANNER: Standard circumstantial evidence, Your Honor.

MR. DEAN: The State would object to a circumstantial evidence charge, Your Honor.

MR. KANNER: Your Honor, the fact that the defendant has owned this automobile or was in possession

of this automobile and that the license number was taken by Mr. Pay is a circumstance. It is not direct evidence that the defendant was involved.

We have the victim's testimony that the defendant got in this car, but she is the only eyeball witness we have, Your Honor.

MR. DEAN: Your Honor, the fact that there is an eyeball witness obliterates any circumstantial evidence charge.

THE COURT: That is true.

Requested Instruction No. 2 is denied.

MR. DEAN: The State would object to No. 3, Your Honor.

[fol. 106] THE COURT: It is incorporated in the General Charge but not in this exact language.

Let me set this aside for just a minute and go on to something else.

MR. KANNER: Judge, on this fourth Instruction, there is a Florida case—I did not cite it with the Instruction, but there is a Florida case on this, that supports this false in one and false in the other.

THE COURT: There is a Florida case, which I am familiar with, and the Instruction is that if there are conflicts in the evidence, you will reconcile those conflicts, if you can—

MR. KANNER: That is the ordinary Instruction.

THE COURT: And if there are conflicts which you cannot reconcile, the jury will accept that testimony which they believe to be true and reject that testimony which they believe to be false. That is in the General Instruction.

So, to the extent that, inasmuch as four is incorporated, in substance, I will deny it as written but I will give it because it is part of the General Instruction.

[fol. 107] No. 5 is denied. There is no admitted perjurer in this case.

MR. KANNER: Right.

MR. DEAN: I believe 6 is incorporated in your General Charge as to credibility, Your Honor.

THE COURT: That is incorporated in the General Charge, the witness' interest or lack of interest and everything else is included in the General Charge.

I have a General Instruction on alibi, which is considerably more lengthy than the Requested Instruction No. 7, and which covers some two pages in the form book, which, frankly, I think is a better Instruction.

MR. KANNER: Okay, Your Honor. I just want an alibi instruction.

THE COURT: That will be granted.

MR. DEAN: I believe the Court has a General Instruction on No. 8.

THE COURT: It will be granted either in this form or the form that I have.

Let me give you the form that I have so you can decide which one.

MR. KANNER: If you have got a—
[fol. 108] THE COURT: Well, I know what you are doing. You are taking these from the Federal Jury Practice Instructions, but let me give it to you from here.

MR. KANNER: Judge, I am not quibbling about the words that you use in the Instruction.

Judge, we do have one problem here that I would like to discuss with my client and that is whether to instruct the jury on lesser included offenses.

THE COURT: There is another thing here, this Instruction No. 3, that we have not passed on yet.

Let me get that out of the way and then we will go into that.

Here is the Alibi Instruction. Do you want to hear it before it is given?

MR. KANNER: If you want, Your Honor.

THE COURT: It is up to you.

"Where alibi is relied upon as a defense, it is not necessary that it should be proven beyond a reasonable doubt in order to be effective. It is sufficient to require an acquittal if the evidence as to alibi raises [fol. 109] a reasonable doubt in the minds of the jurors whether the defendant was present at the time of the alleged crime."

MR. KANNER: Your Honor, this sounds fine.

THE COURT: All right.

Let's look at No. 3.

Let me ask you this. This is, again, not in the same language, but I have a rather lengthy charge on credibility of the witnesses.

MR. KANNER: Your Honor, if the subject is covered in your General Instructions, I am not—

THE COURT: Well, it is not covered in the exact same language.

MR. KANNER: If it is the same idea, that is fine.

THE COURT: Yes. In substance, it is the same.

MR. DEAN: Your Honor, I have no objection to this Instruction being given as long as the Alibi Instruction is withdrawn, because, since there is an alibi given, there is a refutation of the testimony as presented.

In other words, the charge says the jury is not required to accept the unrefuted testimony of a witness, and I think the witness has testified and there have been contradictions.

THE COURT: Let me incorporate it in the General Charge, because it is in there. Let me just show 3 as withdrawn.

Let me read this to you so that I can get your approval on this because that is the only other one, that is No. 8.

That is this: "Gentlemen of the jury, there was testimony that the defendant has previously been convicted of crimes. This does not, as a matter of law, disqualify him to testify and does not, as a matter of law, tend to prove that he committed the crime with which he is charged today."

"The only consideration you are entitled to give that circumstance is if, in your experience, it so dictates, you may believe that a person who has been convicted of a crime is more likely to tell an untruth than one who has not been so convicted."

"However, the law does not assume that a person [fol. 111] convicted of a crime will more quickly lie than one who has not been convicted."

"If, however, in your experience, it is such that you believe he would, you are entitled to give that consideration in determining the truth of his testimony,"

which is the lengthier charge from the Florida case.

MR. KANNER: That is fine, Your Honor.

THE COURT: Then, 8 is withdrawn.

MR. KANNER: Your Honor, I would like an Instruction as to the penalty that robbery incurs.

THE COURT: Granted.

MR. KANNER: And I would like about four minutes to talk to my client as to whether we should include a larceny charge.

THE COURT: Granted. We will take a brief recess. Just let me know.

MR. KANNER: Yes, sir.

THE COURT: State has opening and closing. How long do you think you are going to require to argue this case?

MR. KANNER: I am going to be very short: 45 [fol. 112] minutes or an hour to argue it.

MR. DEAN: That is probably what I will be.

(The trial reconvened pursuant to the taking of a brief recess, and the following proceedings were had out of the hearing of the jury:)

THE COURT: Did you make a decision?

MR. KANNER: Yes, we did. We do not want a larceny charge.

Does your reasonable doubt include evidence or lack of evidence?

THE COURT: Yes.

MR. KANNER: I want that.

Your Honor, if the Court please, during the recess, I have discussed with Mr. Williams the Supreme Court case which allows us the right to request a Jury Instruction on lesser included offenses, and we have discussed this matter in pros and cons at length, and he has, Mr. Williams has agreed with my own opinion that we do not, Your Honor, not wish an Instruction on larceny.

[fol. 113] THE COURT: All right, sir. Now, let me ask you this—Would you ask Mr. Dean to come in here?

MR. KANNER: Your Honor, we do not wish any lesser included crimes.

THE COURT: All right.

(Mr. Dean enters courtroom.)

THE COURT: Mr. Dean, Mr. Kanner has waived the requirement of lesser included offenses. The only thing that I question is, under Rule 1:510, which is the lesser included offense of attempt—that is the only thing that it includes—it says the Court shall charge the jury in this regard.

Now, I am just looking at this one case, Griffin vs. State. I think it may be properly waived. I just want to see if there is any prohibition on it.

MR. KANNER: Your Honor, for the record, I would like to again make a motion for directed verdict of acquittal.

THE COURT: Denied.

This is a case where the Instruction was requested [fol. 114] and refused. I am going to grant your request and charge only on the offense charged in the Information. That is what you want; right?

MR. KANNER: Yes.

THE COURT: No lesser included offenses at all?

MR. KANNER: That is correct, Your Honor.

THE COURT: Bring in the jury.

(Thereupon the jury returned to the courtroom.)

THE COURT: You may proceed, sir.

(Thereupon counsel for the respective parties argued to the jury, which is omitted from this transcript at the request of counsel for the defendant.)

THE COURT: Gentlemen of the jury, the hour now being 5:00 p.m., the Court is going to recess this case until 9:00 a.m. tomorrow morning, at which time I will charge you as to the law.

In excusing you this evening, I am going to permit you to go your separate ways with the further admonition that you still have not heard the charge of the Court [fol. 115] on the law that you are to apply to the facts as you find them from the evidence, and until this has been done and you have had the opportunity to deliberate

among yourselves, you are not now to set your mind upon any determination of the issues as to the guilt or innocence of this defendant.

This you shall not do until you have had an opportunity to hear the law and deliberate among yourselves.

I am going to permit you to go your separate ways and I am going to further admonish you that you are not to discuss this case among yourselves nor with your families, nor with your friends or neighbors.

You are not to read anything about this case, should anything appear in any of the news media.

You are not to watch any television reports or listen to any radio broadcasts concerning this case, if, indeed, there be any.

The Court would ask that you be here promptly at 9:00 a.m., since this is the first order of business the Court will take up, is the charging of the jury as to the law.

At this time, I would ask that when you come into [fol. 116] the building tomorrow, you abide by the same admonition the Court gave you during the luncheon break: If you are in the cafeteria, corridors or elevators, permit no one to discuss the case with you or speak to you about it. Discuss it with no one. Avoid being where you may hear conversation about the case.

Report to the Bailiff at 9:00 a.m. and the trial will resume at that time.

At this time, I will remand you to the custody of the Bailiff and excuse you for the evening.

(Thereupon the jury retired from the courtroom.)

THE COURT: Court is in recess until 9:00 a.m.

(Thereupon a recess was taken until August 16, 1968, at 9:04 a.m.)

[fol. 117]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA, PLAINTIFF

vs.

JOHNNY WILLIAMS, DEFENDANT

TRANSCRIPT OF TESTIMONY—August 16, 1968

The above-entitled case was resumed before the Honorable Paul Baker, Judge of the above-styled court, and a jury, at the Metropolitan Dade County Justice Building, Miami, Florida, on the 16th day of August, 1968, commencing at 9:04 o'clock a.m.

APPEARANCES:

DENIS DEAN and EDWARD A. CARHART,
Assistant State Attorneys,
Miami, Florida,

on behalf of the State of Florida.

RICHARD KANNER, ESQ.,
Specially Appointed Public Defender,
Miami, Florida,

on behalf of the Defendant.

[fol. 118] THE COURT: Would you bring in the panel? Secure the courtroom.

(Courtroom secured.)

THE COURT: We are agreed on the main charge?

MR. KANNER: Yes, Your Honor.

MR. DEAN: Yes, Your Honor.

THE COURT: Bring in the jury.

(Thereupon the jury entered the courtroom.)

MR. DEAN: The State concedes the presence of the jury, waives polling, Your Honor.

MR. KANNER: Yes, sir, Your Honor.

[fol. 119]

CHARGE TO JURY

THE COURT (Baker, J.): Gentlemen of the jury, you have heard the evidence in the case of the State of Florida vs. the defendant, Johnny Williams. It now becomes the duty of this Court to charge you as to the law that you will apply to the facts as you find them.

The State of Florida, by Information filed in this Court, charges the defendant, Johnny Williams, with the crime of robbery, charging in the body of the Information:

"In the name and by authority of the State of Florida:

"Alfonso C. Sepe, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, Information makes that Johnny Williams, on the 6th day of March, 1968, in the County and State aforesaid, did unlawfully and feloniously make an assault upon Maria Salas, and did by force, violence or putting in fear, rob, steal, take and carry away [fol. 120] from the person or custody of said Maria Salas, and against her will, certain monies, goods or other property, to-wit: two rings, said property being the subject of larceny and the property of Maria Salas, in violation of 813.011 of the Florida Statutes, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida."

To this Information, gentlemen, the defendant has entered his plea of not guilty. The Information, together with the plea, form the issue which you, as jurors, are to decide.

The Statute which this defendant is charged with having violated reads as follows:

"Whoever, by force, violence or assault or putting in fear, feloniously robs, steals and takes away from

the person or custody of another, money or other property which may be the subject of larceny, shall be punished by imprisonment in the State Prison for life or for any lesser term of years, at the discretion of the Court."

[fol. 121] The Court charges you, gentlemen, that the gist of the crime of robbery is the felonious taking by the accused of money or other things of value.

The Court charges you further that the amount of money or the value of the property taken is immaterial. It is sufficient that the State carry its burden if they show, in fact, that something of value was taken.

The defendant enters into the trial of this case, gentlemen, clothed with a presumption of innocence, and that presumption remains with him throughout the trial or until the State, if it can, overcomes that presumption and proves his guilt to your satisfaction beyond and to the exclusion of every reasonable doubt.

The burden of proof is upon the State to prove all the material allegations in the Information to your satisfaction and beyond a reasonable doubt, and if the State does that, it is your duty, as jurors, under your oaths, to find the defendant guilty.

[fol. 121A] But, gentlemen, if the State fails to do that, then under your oaths, you are to give the defendant the benefit of any reasonable doubt and acquit him.

The Court charges you that a mere suspicion of guilt or possibility of guilt or probability of guilt is insufficient to convict.

The test is beyond and to the exclusion of a reasonable doubt.

By reasonable doubt is meant a real doubt arising from the evidence or lack of evidence in the case, and not just a mere fanciful or imaginary doubt, but one for which you can give your minds and conscience a satisfactory reason after considering all of the facts and circumstances of the case.

It is that stage of the case, gentlemen, which after a consideration of the entire testimony, the jurors' minds are in that condition that they cannot say they feel an

abiding conviction to a moral certainty of the truth of the charge.

You gentlemen are the sole judges of the credibility of [fol. 122] the witnesses and of the weight and credit to be given their testimony.

In determining this, you will look to all of the facts and circumstances of the case, the witnesses manner of testifying, their demeanor on the witness stand, their intelligence, their bias or prejudice, if the same should appear from the trial, their means and opportunity of knowing the facts about which they have testified, their interest or lack of interest in the outcome of the case, the probability or improbability of their testimony and the reasonableness or unreasonableness of their testimony.

If you find conflicts in the evidence, you gentlemen will reconcile those conflicts; if you can, without imputing perjury to any witness.

But if you find conflicts you cannot reconcile, then take that testimony which you believe to be true and reject that testimony which you believe to be false.

The defendant, Johnny Williams, has testified in this case, which he has a right to do under the laws of the [fol. 123] State of Florida, and you gentlemen will measure his testimony by the same rules the Court has given you in its charge as to the testimony of other witnessrs.

You gentlemen may believe the testimony of the defendant in preference to that of any other witness testifying, if you believe it is entitled to that much weight and credit. It is solely for you, the jury, to say how much weight and credit you will give the testimony of the defendant and the testimony of all the witnesses who have testified in this case.

There has been some mention made in this case that there are persons who were not called as witnesses for either the State or the defense and who may have knowledge about this case or may be able to corroborate some of the testimony of other witnesses who have testified in this case.

The Court instructs you that neither party to this case is obligated to call as witnesses all persons who

may have some knowledge about matters testified in this court. It is the right of the State and of the defense to choose the manner of conducting their respective cases and to subpoena as witnesses any person whom they find and upon whom they care to rely.

[fol. 124] You gentlemen are instructed that you are not to assume or guess what such persons might say if they were here to testify. You must rely solely upon the evidence that has been presented during the course of this trial.

The defendant in this case relies on a defense of what is known as alibi. The Court charges you, gentlemen, that where alibi is relied upon as a defense, it is not necessary that it should be proven beyond a reasonable doubt in order to be effective.

It is sufficient to require an acquittal if the evidence as to alibi raises a reasonable doubt in the minds of the jury as to whether the defendant was present at the scene of the alleged crime, if, in fact, such crime was committed.

If the jury should believe from the evidence that the defendant was not present at the place where and the time when the crime charged against him was committed, or if you should, from the evidence or lack of evidence, entertain a reasonable doubt whether the defendant was present, then in either event you should find the defendant not guilty.

However, gentlemen, the proof of alibi must include [fol. 125] and cover the entire time when the presence of the accused was required to commit the offense charged.

Gentlemen, there was testimony in this case that the defendant, Johnny Williams, has previously been convicted of crimes. That does not, as a matter of law, disqualify him from testifying and does not, as a matter of law, tend to prove that he committed the crime with which he stands charged in this Information.

The only consideration the jury is entitled to give the circumstance of his previous convictions is if your experience so dictates, you may believe a person who has been convicted of a crime is more likely to tell an untruth than one who has not been convicted.

However, the law does not assume that a person convicted of a crime will more quickly lie than one who has not been convicted.

If, however, in your experience, it is such that you believe he would, you are entitled to give that consideration in determining the truth of his testimony.

The Court further charges you, gentlemen, the fact [fol. 126] that an Information has been filed in this Court charging this defendant with a crime is not to be considered by you as an indication of the guilt of this defendant.

An Information is merely a legal document. It is the vehicle by which the defendant is brought before the Court and informed of the charge against him and that is the only weight and credit that you are to give it.

The Court further charges you that attorneys conducting the trial of the case are officers of this Court and are not permitted to take the witness stand and testify.

At the conclusion of this trial, you heard the argument of counsel. This is that time provided by law during the course of the trial for the attorneys to sum up and argue the evidence to you in a light most favorable to their case. It is argument and nothing more and this is the only weight and credit that you are to give it.

During the course of this trial, gentlemen, various rulings have been made by this Court. From these rulings or from anything that has occurred during this trial, you are not to infer what the opinion of this Court may [fol. 127] be as to the guilt or innocence of the accused.

With the Court's opinion you have nothing whatever to do, and if you have even a suspicion of what the Court may think in the matter, you have no right to consider it, any more than you would have the right to consider the opinion of anyone else.

The question of the guilt or innocence of the defendant is for you alone to decide regardless of what anyone else may think about it.

This Court makes no suggestion to you what has or has not been proven. These are matters of fact solely within the province of the jury.

You gentlemen should confine your deliberations to the

evidence that has been presented during the course of this trial.

In arriving at your verdict as to whether the defendant is guilty or not guilty, you gentlemen should not be swayed by sympathy for the defendant nor by prejudice against him because of the type of charge or for any other reason, and you gentlemen are not to concern yourselves with the penalty that may be imposed should the defendant be found guilty. That, gentlemen, is the duty and responsibility of the Court.

[fol. 128] There has been prepared for you a form of the verdict, which reads as follows:

"In the Criminal Court of Record in and for Dade County, Florida, Case No. 68-1466, the State of Florida vs. Johnny Williams. Verdict: We, the jury, at Miami, Dade County, Florida, this 16th day of August, A.D., 1968, find the defendant"—naming him—"Johnny Williams"—and thereafter, gentlemen,

on the form of the verdict is a blank space.

If, after a full and fair deliberation, the jury's mind is in that condition that it believes the State has carried its burden and proven the truth of the charge laid in the Information beyond and to the exclusion of every reasonable doubt and the jury votes to convict the defendant of the crime of robbery, then in the blank space after the name, "Johnny Williams," you will write the words: "Guilty as charged."

If, however, after a full and fair deliberation, the jury's mind is in that condition that they do not believe the State has carried its burden and that they have failed to prove the truth of the charge and you vote to acquit this defendant, then after the name, "Johnny [fol. 129] Williams," you will write the words: "Not guilty."

The Court charges you, gentlemen, that each juror is responsible for his own verdict, but the verdict of this jury must be the unanimous verdict of all six of you.

I want your verdict to be dated, closed with the words: "So say we all," and signed by one of your number as Foreman.

Your first business upon entering the jury room should be to select a Foreman so that you may carry out orderly deliberations.

In any event, gentlemen, let your verdict speak the truth, as you find it.

You may take with you the Information, the form of the verdict and such physical evidence as has been introduced during the course of this trial, and when you have reached a verdict, if you will knock on the door and inform the Bailiff he will so advise the Court.

If, during the course of your deliberations, any question should arise, knock on the door, inform the Bailiff and he will so advise the Court.

At this time, gentlemen, you may retire and consider your verdict.

[fol. 130] (At 9:21 a.m., the jury retired to consider of their verdict, and at 10:44 a.m., the following proceedings were had:)

(Defendant returns to the courtroom.)

THE COURT: Bring in the panel, please.

MR. CARHART: Mr. Dean is not here.

THE COURT: It does not make any difference. You can take the verdict for him. Time is important. Bring in the panel, please.

(Thereupon the jury returned to the courtroom.)

THE COURT: Do both sides concede and waive the polling of the jury?

MR. CARHART: Yes, Your Honor.

THE COURT: Gentlemen of the jury, have you reached a verdict?

THE FOREMAN: We have.

THE COURT: Would you hand it to the Clerk, please.

(Handing to Clerk and Court.)

THE COURT: Publish the verdict.

[fol. 131] THE CLERK: (Reading): "In the Criminal Court of Record in and for Dade County, Florida, Case No. 68-1466, the State of Florida vs.

Johnny Williams. Verdict: We, the jury, at Miami, Dade County, Florida, this 16th day of August, A.D., 1968, find the Defendant Johnny Williams guilty as charged. So say we all. Wendell Hays, Foreman."

THE COURT: Does either side wish the jury polled?

MR. KANNER: Yes, Your Honor.

THE COURT: Poll the jury.

(Thereupon the Clerk polled the jury, and in response to the question: "Is this your verdict?" each juror answered in the affirmative.)

MR. KANNER: Your Honor, on this case, I would like about 15 days to file a motion for new trial.

THE COURT: All right.

Johnny Williams, you have been found guilty of the crime of robbery by a jury. You are adjudicated guilty by the Court.

[fol. 132] What, if anything, have you to say why sentence should not be passed upon you? I will hear from you, if you wish.

MR. KANNER: Your Honor, I have no knowledge of any legal impediments why sentence should not be imposed.

MR. CARHART: Your Honor, this is the seventh felony conviction for this defendant and the fourth robbery conviction. I believe this is a person that should not receive any leniency on the part of the Court.

THE COURT: Is there anything you wish to say?

THE DEFENDANT: No, sir, your Honor, I have nothing to say.

THE COURT: Johnny Williams, it is the sentence of this Court that you be confined at hard labor in the State Penitentiary for the remainder of your natural life.

I will grant you 15 days to file motions.

(Thereupon the trial was concluded.)

[fol. 133]

[Reporter's Certificate (Omitted in Printing)]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

JOHNNY WILLIAMS

DEFENDANT'S REQUESTED INSTRUCTION # 1—
Filed August 16, 1968

ROBBERY

In order to justify conviction of robbery by a person armed, it is necessary to establish intent of the perpetrator at the time of assault to kill or maim his victim if resisted.

- (1) Arnold v. State 83 So.2d 105 (1955)
- (2) Ex parte Wilson 14 So.2d 846 (1943)

Denied

/s/ Paul Baker
Judge

No. 68-1466

JOHNNY WILLIAMS

DEFENDANT'S REQUESTED INSTRUCTION # 2—
Filed August 16, 1968

EVIDENCE

When circumstantial evidence is relied upon for conviction in a criminal case, the circumstances, when taken together, must be of a conclusive nature leading on the whole to a reasonable and moral certainty that the accused and no one else committed the offense. If the facts and proof are equally consistent with some other rational conclusion than of guilt, the evidence is insufficient. If the evidence leaves it indefinite as to which of several hypothesis is true, such evidence cannot amount to proof however great the probability may be. Circumstantial evidence which leaves nothing more than a suspicion that the accused committed the crime is not sufficient to sustain a conviction.

Harrison v. State 104 So.2d 391

Denied

/s/ Paul Baker
Judge

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 68-1466

THE STATE OF FLORIDA

vs.

JOHNNY WILLIAMS

VERDICT—Filed August 16, 1968

We, the jury, at Miami, Dade County, Florida, this
16 day of August A.D., 1968, find the defendant,

JOHNNY WILLIAMS, GUILTY AS CHARGED

So Say We All.

/s/. Wendell J. Hays
Foreman

BENCH DOCKET

IN THE CRIMINAL COURT OF RECORD
DADE COUNTY, FLORIDA

Case No. 68-1466

Charge, Robbery

STATE OF FLORIDA

vs.

JOHNNY WILLIAMS

JUDGMENT—August 16, 1968

It appearing unto this Court that you Johnny Williams have been regularly tried and convicted of Robbery

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that you be imprisoned by confinement at hard labor in the STATE PENITENTIARY for a term of the remainder of your natural life.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 16 day of August A.D. 1968.

/s/ Paul Baker
Judge

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA

—vs.—

JOHNNY WILLIAMS

MOTION FOR NEW TRIAL—Filed August 23, 1968

The defendant moves for a new trial on the grounds that the court committed the following reversible errors:

1. The court erred in denying the defendant's motion for a protective order.
2. The court erred in denying the defendant's to empanel a twelve man jury.
3. The court erred in denying the defendant's request for an instruction on circumstantial evidence.
4. The court erred in not granting the defendant's motion for a directed verdict made at the close of the state's case and again at the close of all of the testimony, on the grounds that the evidence presented was not sufficient to convict.
5. The court erred in not dismissing the charges when the testimony disclosed that the defendant was illegally arrested.
6. The court erred in allowing the prosecution to bring out the number of times that the defendant had been previously convicted of a felony.

A copy of this motion was mailed to the State Attorney this 23 day of August, 1968.

/s/ Richard Kanner
Attorney for Defendant
609 Professional Arts Center
1150 N. W. 14th Street
Miami, Florida 33136
377-9711

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA
DIVISION "D"

68-1466

STATE OF FLORIDA

vs.

JOHNNY WILLIAMS

MINUTE BOOK ENTRY—August 28, 1968

Denis A. Dean, Assistant State Attorney.

Richard Kanner, Counsel for the Defendant.

Reported by: Sylvia Burrow.

Richard Kanner, Counsel for the Defendant, Johnny Williams, presented a Motion for a New Trial, which motion the Court denied.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA

—vs.—

JOHNNY WILLIAMS

NOTICE OF APPEAL—Filed September 24, 1968

JOHNNY WILLIAMS, defendant, takes and enters his appeal to the Florida Supreme Court to review the final order and judgment of conviction of the Criminal Court of Record In and For Dade County, Florida, entered on August 15, 1968, and rendered upon the denial of the appellant's motion for new trial on August 28, 1968. All parties to said cause are called upon to take notice of the entry of this appeal.

/s/ Richard Kanner
Attorney for Defendant
1150 N. W. 14th Street
Miami, Florida 33136

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-1466

STATE OF FLORIDA

—vs.—

JOHNNY WILLIAMS

ASSIGNMENTS OF ERROR—Filed September 24, 1968

The defendant assigns the following errors in this cause:

1. The court erred in denying the defendant's motion to empanel a twelve man jury.
2. The court erred in denying defendant's motion for an order protecting the defendant from disclosing the defendant's alibi witnesses.
3. The court erred in denying defendant's request for an instruction on circumstantial evidence.
4. The court erred in not granting the defendant's motion for a directed verdict made at the close of the state's case, and again at the close of all of the testimony, on the grounds that the evidence presented was not sufficient to convict.
5. The court erred in not dismissing the charges when testimony disclosed that the defendant was illegally arrested.
6. The court erred in allowing the state to bring out the number of times that defendant had been previously convicted of a felony.

A copy of this motion was mailed to the State Attorney this 24 day of September, 1968.

/s/ Richard Kanner
Attorney for Defendant
1150 N. W. 14th Street
Miami, Florida 33136

[Certificate of the Clerk of the Court
(Omitted in Printing)]

IN THE SUPREME COURT OF FLORIDA

Case No. —

JOHNNY WILLIAMS, APPELLANT

—v—

STATE OF FLORIDA, APPELLEE

MOTION TO TRANSFER

Comes now appellee, by and through its undersigned attorneys, and moves this court for entry of an order transferring said cause to the District Court of Appeal, Third District, Florida, and in support thereof says:

I.

That the jurisdiction of this court has been improvidently invoked. The notice of appeal filed in this court shows on its face that the appeal is taken from a judgment of conviction in the Criminal Court of Record, in and for Dade County, Florida. Appeals from trial courts may be taken directly to this court only from judgments imposing the death penalty. Rule 2.1a.(5)(a), Florida Appellate Rules.

EARL FAIRCLOTH
Attorney General
WALLACE E. ALLBRITTON
Assistant Attorney General

[Proof of Service (Omitted in Printing)]

IN THE SUPREME COURT OF FLORIDA

No.

JOHNNY WILLIAMS, APPELLANT

—vs.—

STATE OF FLORIDA, APPELLEE

RESPONSE

The appellant, in response to the appellee's motion to transfer this cause to the District Court of Appeal, Third District, would show that this court has jurisdiction because the final judgment passed directly upon the validity of a State Statute, and the final judgment further construed a controlling provision of both the Florida and Federal Constitutions.

1. The constitutionality of Florida Statute 913.10, allowing a six man trial jury, was directly attacked by the defendant's motion for the court to empanel a twelve man jury. This motion was denied, ruling in effect that this Statute is constitutional.

2. The constitutionality of Florida Criminal Procedure Rule 1.200, providing that the defendant furnish the State the names of defendant's alibi witnesses, was directly attacked on two separate grounds by the defendant's motion for the court to enter a protective order.

- (a) The notice of alibi rule is a rule of substantive law, and accordingly is not authorized by Article 5, Section 3, of the Florida Constitution, which limits the rule making power of the Florida Supreme Court to adopt rules of practice and procedure only, or elsewhere in the Florida Constitution or Florida Statutes.
- (b) The notice of alibi rule compels the defendant in a criminal case to be a witness against himself in violation of the Florida Declaration of Rights, Section 12, and the 5th and 14th Amendment of the United States Constitution.

WHEREOFRE, the appellant prays that the appellee's motion to transfer be denied.

A copy of this pleading was mailed to the Attorney General this 10 day of October, 1968.

/s/ Richard Kanner
Attorney for Appellant
1150 N. W. 14th Street
Miami, Florida 33136

IN THE SUPREME COURT OF FLORIDA

Case No. 37,848

JOHNNY WILLIAMS, APPELLANT

vs.

STATE OF FLORIDA, APPELLEE

ORDER OF TRANSFER—November 22, 1968

Following the entry of its order of November 11, 1968, transferring this cause to the District Court of Appeal of Florida, Third District, the Court has considered the objections filed by the appellant protesting the transfer. The jurisdictional aspects of the matter have been carefully re-examined. Finding that the record fails to present a cause within the direct appellate jurisdiction of this Court, the Court adheres to its order of November 11, 1968, transferring the cause to the District Court of Appeal of Florida, Third District.

cc: Honorable Wallace E. Allbritton
Honorable Richard Kanner
Honorable William P. Carter
Honorable J. F. McCracken

[NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
PETITION AND, IF FILED, DISPOSED OF.]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1969

Case No. 68-1017

JOHNNY WILLIAMS, APPELLANT

v.s.

STATE OF FLORIDA, APPELLEE

OPINION—Filed April 29, 1969

An Appeal from the Criminal Court of Record for
Dade County, Paul Baker, Judge.

Richard Kanner, for appellant.

Earl Faircloth, Attorney General, Jesse J. McCrary,
Jr., and Melvin Grossman, Assistant Attorney Generals,
for appellee.

Before CHARLES CARROLL, C.J., and HENDRY and
SWANN, JJ.

PER CURIAM.

This is defendant's appeal from a conviction of robbery. His first point on appeal is that the trial court erred in denying his motion for a protective order which he made in response to the State's demand for disclosure of alibi witnesses pursuant to Rule 1.200, Florida Rules of Criminal Procedure.

Appellant argues that the notice of alibi rule is a rule of substantive law, and accordingly is not authorized by Article 5, Section 3, of the Florida Constitution.^[1]

[1] Article 5, Section 3 of the Florida Constitution provides as follows: "The practice and procedure in all courts shall be governed by rules adopted by the Supreme Court." Florida Rule of Criminal Procedure 1.200 was adopted by the Florida Supreme Court, In Re Florida Rules of Criminal Procedure, Fla. 1967, 196 So.2d 124, 148.

Appellant's next point is that Rule 1.200, *supra*, violates his privilege against self-incrimination as provided by the Florida Declaration of Rights, Section 12, and the Fifth and Fourteenth Amendments of the United States Constitution.

We find no substantial merit in either of these two points on appeal.

Appellant's third and last point raises the question of whether his constitutional rights were violated when the trial court denied his request for a trial by a jury of twelve instead of six. The trial court ruled that the appellant was entitled, under Florida law, to a jury consisting of only six persons; the state contends that the trial court was correct in this ruling. We agree, and base our holding on the United States Supreme Court's ruling in the case of *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444 (1968).

Affirmed.

SUPREME COURT OF THE UNITED STATES**No. 323 Misc., October Term, 1969****JOHNNY WILLIAMS, PETITIONER****v.****FLORIDA**

On petition for writ of Certiorari to the District Court of Appeal of the State of Florida, Third District.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND GRANTING PETITION
FOR WRIT OF CERTIORARI—December 8, 1969**

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 927 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.